

2007-2008

**SENATE
COMMERCE, SMALL
BUSINESS, &
ENTREPRENEURSHIP
COMMITTEE**

MINUTES

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, July 10, 2007, 11:00 AM
1027, LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 838	ABC Law Changes.-AB	Senator Bingham
HB 588	Update the Unauthorized Insurers Laws.-AB	Representative Goforth
HB 729	Penalties for Insurance Rate Evasion Fraud.-AB	Representative Goforth Representative Holliman
HB 731	Revise Life and Health Insurance Laws.-AB	Representative Goforth Representative Holliman
HB 735	Limit Use/State Property Fire Insurance Fund.-AB	Representative Goforth Representative Dockham

Other Business

Adjournment

**SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP
COMMITTEE**

**Tuesday, July 10, 2007 at 11:00 a.m.
Room 1027, Legislative Building**

MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met at 11:00 a.m. on July 10, 2007, in Room 1027 of the Legislative Building. Nineteen members of the committee were present. Senator R. C. Soles, Jr., Chair of the Committee, presided.

Senator Soles introduced the pages who were assisting in the meeting: Kirby Freuney of Forsyth County, sponsored by Senator Linda Garrou; Donavan Wells of Wake County, sponsored by Senator Marc Basnight; Houston Stokes of Lincoln County, sponsored by Senator James Forrester; Stephanie Vaughn and Maddie Chandler of Alamance County sponsored by Senator Tony Foriest; and Hannah Leonard of Columbus County, sponsored by Senator Soles.

Senator Soles recognized Senator Stan Bingham to present SB 838, ABC Law Changes.-AB. Senator Vernon Malone moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Senator Phil Berger sent forth Amendment #1 and moved its adoption. The motion carried. Mr. Mike Herring, Administrator and Mr. Fred Gregory, Counsel, of the State ABC Board explained the bill and answered questions. Mr. Michael Gross, Bill Drafting Division, also answered questions. Ms. Elizabeth Dalton, representing the North Carolina Retail Merchants Association, spoke in favor of the bill. Senator Jim Jacumin sent forth Amendment #2 and moved its adoption. The motion failed. Senator Phil Berger sent forth Amendment #3 and moved its adoption. The motion carried. Senator Phil Berger moved to give an unfavorable report to the bill, but favorable as to the committee substitute as amended and rolled into a new committee substitute with a sequential referral to Finance. The motion carried.

Senator Soles recognized Representative Bruce Goforth to present HB 588, Update the Unauthorized Insurers Laws. Senator William Purcell moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Senator P. Berger sent forth an amendment and moved its adoption. The motion carried. Ms. Rose Vaughn Williams, Counsel, Department of Insurance, explained the bill and answered questions. Mr. Jim Long, Commissioner, Department of Insurance, answered some concerns. Senator P. Berge r moved an unfavorable report as to the bill, but favorable as to the committee substitute as amended and rolled into a new committee substitute. The motion carried.

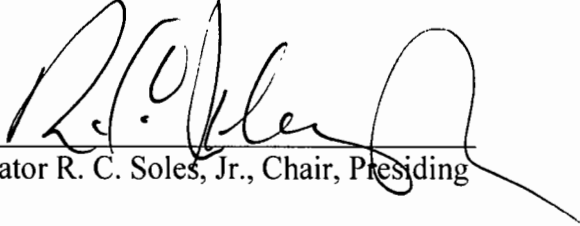
Senator Soles recognized Representative Jerry Dockham to present HB 731, Revise Life and Health Insurance Laws.-AB. Senator P. Berger moved adoption of a proposed committee substitute for purposes of discussion. The motion carried. Ms. Williams explained the committee substitute and answered some questions. Senator P. Berger moved to give the bill an unfavorable report, but favorable as to the committee substitute. The motion carried.

Senator Soles again recognized Representative Jerry Dockham to present HB 735, Limit Use/State Property Fire Insurance Fund.-AB. Senator P. Berger moved adoption of a proposed committee substitute for purposes of discussion. The motion carried. Ms. Williams, General

Counsel, explained the committee substitute. Senator P. Berger moved to give the bill an unfavorable report, but favorable as to the committee substitute. The motion carried.

SB 729 was not heard at the sponsor's request.

The meeting adjourned at 12:00 noon.



Senator R. C. Soles, Jr., Chair, Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, July 10, 2007

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

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

H.B.	588	Update the Unauthorized Insurers Laws.-AB
		Draft Number: PCS 70577
		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)	735	Limit Use/State Property Fire Insurance Fund.-AB
		Draft Number: PCS 10258
		Sequential Referral: None
		Recommended Referral: None
		Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Wednesday, July 11, 2007

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

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

S.B.	838	ABC Law Changes.-AB	
		Draft Number:	PCS 85349
		Sequential Referral:	Finance
		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) 731	Revise Life and Health Insurance Laws.-AB	
	Draft Number:	PCS 80464
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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1

SENATE BILL 838

Short Title: ABC Law Changes.-AB

(Public)

Sponsors: Senator Bingham.

Referred to: Commerce, Small Business and Entrepreneurship.

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FINES FOR PENALTIES AND OFFERS IN
COMPROMISE FOR ALCOHOLIC BEVERAGE CONTROL LAW
VIOLATIONS, TO REQUIRE AGENTS OF THE DIVISION OF ALCOHOL
LAW ENFORCEMENT TO SERVE AND EXECUTE ALCOHOLIC BEVERAGE
CONTROL AND NORTH CAROLINA STATE LOTTERY COMMISSION
ORDERS, NOTICES, AND DEMANDS, TO CHANGE ABC PERMIT
REGISTRATION AND INSPECTION FEE REVOCATIONS TO SUSPENSIONS,
TO ALLOW LOCAL GOVERNMENTS AND NONPROFIT ORGANIZATIONS
TO HAVE SPECIAL ONE-TIME PERMITS TO SELL AND SERVE MALT
BEVERAGES, WINES, MIXED BEVERAGES, AND SPIRITUOUS LIQUORS
AT FUND-RAISERS, TO MAKE TECHNICAL CORRECTIONS TO
COMMERCIAL PERMITS, AND TO ALLOW WINEMAKING ON PREMISES
PERMITS AT UNFORTIFIED WINERIES AS RECOMMENDED BY THE
ALCOHOLIC BEVERAGE COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-104(a)(3) reads as rewritten:

"(3) Fine the permittee up to ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for the first violation. up to ~~seven hundred fifty dollars (\$750.00)~~ one thousand five hundred dollars (\$1,500) for the second violation, and up to ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000) for the third violation; or".

SECTION 2. G.S. 18B-104(b) reads as rewritten:

"(b) Compromise. – In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than ~~five thousand dollars (\$5,000)~~ twenty-five thousand dollars (\$25,000). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case."

1 **SECTION 3.** G.S. 18B-500(d) reads as rewritten:

2 "(d) Service of Commission Orders. – Alcohol law-enforcement agents ~~may~~shall
3 serve and execute notices, orders, or demands issued by the Alcoholic Beverage Control
4 Commission or the North Carolina State Lottery Commission for the surrender of
5 permits or relating to any administrative proceeding. While serving and executing such
6 notices, orders, or demands, alcohol law-enforcement agents shall have all the power
7 and authority possessed by law-enforcement officers when executing an arrest warrant."

8 **SECTION 4.** G.S. 18B-900(a) reads as rewritten:

9 **"§ 18B-900. Qualifications for permit.**

10 (a) Requirements. – To be eligible to receive and to hold an ABC permit, a
11 person shall:

- 12 (1) Be at least 21 years old, unless the person is a manager of a business
13 selling only malt beverages and unfortified wine, in which case the
14 person shall be at least 19 years old;
- 15 (2) Be a resident of North Carolina unless:
 - 16 a. He is an officer, director or stockholder of a corporate applicant
17 or permittee and is not a manager or otherwise responsible for
18 the day-to-day operation of the business; or
 - 19 b. He has executed a power of attorney designating a qualified
20 resident of this State to serve as attorney in fact for the purposes
21 of receiving service of process and managing the business for
22 which permits are sought; or
 - 23 c. He is applying for a nonresident malt beverage vendor permit, a
24 nonresident wine vendor permit, or a vendor representative
25 permit;
- 26 (3) Not have been convicted of a felony within three years, and, if
27 convicted of a felony before then, shall have had his citizenship
28 restored;
- 29 (4) Not have been convicted of an alcoholic beverage offense within two
30 years;
- 31 (5) Not have been convicted of a misdemeanor controlled substance
32 offense within two years; and
- 33 (6) Not have had an alcoholic beverage permit revoked within three years,
34 except where the revocation was based solely on a permittee's failure
35 to pay the annual registration and inspection fee required in G.S.
36 18B-903(b1).
- 37 (7) Not have, whether as an individual or as an officer, director,
38 shareholder or manager of a corporate permittee, an unsatisfied
39 outstanding final judgment that was entered against him in an action
40 under Article 1A of this Chapter.
- 41 (8) Be a United States citizen with a valid social security number or valid
42 documentation demonstrating legal presence in the United States and
43 that documentation is issued to the applicant under the authority of the
44 United States government.

1 To avoid undue hardship, however, the Commission may decline to take action under
2 G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5)."

3 **SECTION 5.** G.S. 18B-903(b1) reads as rewritten:

4 "(b1) Registration. – Each person holding a malt beverage, fortified wine, or
5 unfortified wine permit issued pursuant to G.S. 18B-902(d)(1) through
6 G.S. 18B-902(d)(6) shall register by May 1 of each year on a form provided by the
7 Commission, in order to provide information needed by the State in enforcing this
8 Chapter and to support the costs of that enforcement. The registration required by this
9 subsection shall be accompanied by an annual registration and inspection fee of two
10 hundred dollars (\$200.00) for each permit held. The fee shall be paid by May 1 of each
11 year. A registration fee shall not be refundable. Failure to pay the annual registration
12 and inspection fee shall result in ~~revocation of the permit~~ a suspension of the permit
13 until the registration fee is received by the Commission and the permits are reinstated."

14 **SECTION 6.** G.S. 18B-1002(5) reads as rewritten:

15 "(5) A permit may be issued to a unit of local government, or to a nonprofit
16 organization or a political organization to sell or serve wine, malt
17 beverages, mixed beverages, and spirituous liquor at a ticketed event
18 held to allow the unit of local government or organization to raise
19 funds. For purposes of this subdivision "nonprofit organization" means
20 an organization that is exempt from taxation under Section 501(c)(3),
21 501(c)(4), 501(c)(6), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of
22 the Internal Revenue Code or is exempt under similar provisions of the
23 General Statutes as a bona fide nonprofit charitable, civic, religious,
24 fraternal, patriotic, or veterans' organization or as a nonprofit volunteer
25 fire department, or as a nonprofit volunteer rescue squad or a bona fide
26 homeowners' or property owners' association. For purposes of this
27 subdivision "political organization" means an organization covered by
28 the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization
29 established by or for a person who is a candidate who has filed a notice
30 of candidacy, paid the filing fees or filed the required petition, and
31 been certified as a candidate. The issuance of this permit will also
32 allow the issuance of a purchase-transportation permit under
33 G.S. 18B-403 and 18B-404 and the use for culinary purposes of
34 spirituous liquor lawfully purchased for use in mixed beverages."

35 **SECTION 7.** G.S. 18B-1100 reads as rewritten:

36 **"§ 18B-1100. Commercial permits.**

37 The Commission may issue the following commercial permits:

- 38 (1) Unfortified winery
- 39 (2) Fortified winery
- 40 (3) Limited winery
- 41 (4) Brewery
- 42 (5) Distillery
- 43 (6) Fuel alcohol
- 44 (7) Wine importer

- (8) Wine wholesaler
- (9) Malt beverages importer
- (10) Malt beverages wholesaler
- (11) Bottler
- (12) Salesman
- (13) Vendor representative
- (14) Nonresident malt beverage vendor
- (15) Nonresident wine vendor
- (16) Winery special show
- (17) Liquor importer/bottler permit
- (18) Cider and vinegar ~~manufacturer~~ manufacturer
- (19) Wine producer ~~permit~~ permit."

SECTION 8. G.S. 18B-1101 is amended by adding a new subdivision to read:

"§ 18B-1101. Authorization of unfortified winery permit.

The holder of an unfortified winery permit may:

- ...
- (8) Allow winemaking on premises as allowed by a permit issued pursuant to G.S. 18B-1001(17).

..."

SECTION 9. Sections 1 and 2 of this act become effective December 1, 2007, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 838
PROPOSED COMMITTEE SUBSTITUTE S838-CSMAf-12 [v.2]

7/9/2007 1:26:12 PM

Short Title: ABC Law Changes.-AB

(Public)

Sponsors:

Referred to:

March 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE ISSUANCE OF OFF PREMISES MALT BEVERAGE
3 AND UNFORTIFIED WINE PERMITS TO INCORPORATED
4 MUNICIPALITIES AFTER AN ELECTION ALLOWING THE SALE OF MIXED
5 BEVERAGES, TO REQUIRE AN APPLICANT FOR AN ABC PERMIT TO BE A
6 UNITED STATES CITIZEN OR LEGALLY PRESENT IN THE UNITED
7 STATES FOR A PERMIT TO BE ISSUED, TO CHANGE ABC PERMIT
8 REGISTRATION AND INSPECTION FEE REVOCATIONS TO SUSPENSIONS,
9 TO ALLOW LOCAL GOVERNMENTS AND NONPROFIT ORGANIZATIONS
10 TO HAVE SPECIAL ONE-TIME PERMITS TO SELL AND SERVE MALT
11 BEVERAGES, WINES, MIXED BEVERAGES, AND SPIRITUOUS LIQUORS
12 AT FUND-RAISERS, TO MAKE TECHNICAL CORRECTIONS TO
13 COMMERCIAL PERMITS, TO ALLOW WINEMAKING ON PREMISES
14 PERMITS AT UNFORTIFIED WINERIES, AND TO CHANGE THE FEE FOR
15 WINE MAKING ON PREMISES PERMITS AS RECOMMENDED BY THE
16 ALCOHOLIC BEVERAGE CONTROL COMMISSION.

17 The General Assembly of North Carolina enacts:

18 SECTION 1. G.S. 18B-603(d)(3) reads as rewritten:

19 "(3) The Commission may issue off-premises malt beverage permits to any
20 establishment that meets the requirements under G.S. 18B-1001(2) in
21 any township or incorporated municipality which has voted to permit
22 the sale of mixed beverages, regardless of any other local act
23 concerning sales of those kinds of alcoholic beverages. The
24 Commission may also issue off-premises unfortified wine permits to
25 any establishment that meets the requirements under G.S. 18B-1001(4)
26 in any township or incorporated municipality which has voted to
27 permit the sale of mixed beverages, regardless of any other local act
28 concerning sales of those kinds of alcoholic beverages."

SECTION 2. G.S. 18B-900(a) reads as rewritten:

"§ 18B-900. Qualifications for permit.

(a) Requirements. – To be eligible to receive and to hold an ABC permit, a person shall:

- (1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;
- (2) Be a resident of North Carolina unless:
 - a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or
 - b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or
 - c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;
- (3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;
- (4) Not have been convicted of an alcoholic beverage offense within two years;
- (5) Not have been convicted of a misdemeanor controlled substance offense within two years; and
- (6) Not have had an alcoholic beverage permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual registration and inspection fee required in G.S. 18B-903(b1).
- (7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.
- (8) Be a United States citizen with a valid social security number or, if not a citizen of the United States, present valid documentation demonstrating legal presence in the United States and that documentation is issued to the applicant under the authority of the United States government.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5)."

SECTION 3. G.S. 18B-903(b1) reads as rewritten:

"(b1) Registration. – Each person holding a malt beverage, fortified wine, or unfortified wine permit issued pursuant to G.S. 18B-902(d)(1) through G.S. 18B-902(d)(6) shall register by May 1 of each year on a form provided by the

Commission, in order to provide information needed by the State in enforcing this Chapter and to support the costs of that enforcement. The registration required by this subsection shall be accompanied by an annual registration and inspection fee of two hundred dollars (\$200.00) for each permit held. The fee shall be paid by May 1 of each year. A registration fee shall not be refundable. Failure to pay the annual registration and inspection fee shall result in ~~revocation of the permit~~ a suspension of the permit until the registration fee is received by the Commission and the permits are reinstated."

SECTION 4. G.S. 18B-1002(5) reads as rewritten:

"(5) A permit may be issued to a unit of local government, or to a nonprofit organization or a political organization to sell or serve wine, malt beverages, mixed beverages, and spirituous liquor at a ticketed event held to allow the unit of local government or organization to raise funds. For purposes of this subdivision "nonprofit organization" means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code or is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic, or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. For purposes of this subdivision "political organization" means an organization covered by the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization established by or for a person who is a candidate who has filed a notice of candidacy, paid the filing fees or filed the required petition, and been certified as a candidate. The issuance of this permit will also allow the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and the use for culinary purposes of spirituous liquor lawfully purchased for use in mixed beverages."

SECTION 5. G.S. 18B-1100 reads as rewritten:

"§ 18B-1100. Commercial permits.

The Commission may issue the following commercial permits:

- (1) Unfortified winery
- (2) Fortified winery
- (3) Limited winery
- (4) Brewery
- (5) Distillery
- (6) Fuel alcohol
- (7) Wine importer
- (8) Wine wholesaler
- (9) Malt beverages importer
- (10) Malt beverages wholesaler
- (11) Bottler
- (12) Salesman
- (13) Vendor representative

- 1 (14) Nonresident malt beverage vendor
2 (15) Nonresident wine vendor
3 (16) Winery special show
4 (17) Liquor importer/bottler permit
5 (18) Cider and vinegar ~~manufacturer~~manufacturer
6 (19) Wine producer ~~permit~~permit."

7 **SECTION 6.** G.S. 18B-1101 is amended by adding a new subdivision to
8 read:

9 **"§ 18B-1101. Authorization of unfortified winery permit.**

10 The holder of an unfortified winery permit may:

11 ...

- 12 (8) Allow winemaking on premises as allowed by a permit issued pursuant
13 to G.S. 18B-1001(17).

14 ..."

15 **SECTION 7.** G.S. 18B-902(d) reads as rewritten:

16 "(d) Fees. – An application for an ABC permit shall be accompanied by payment
17 of the following application fee:

18 ...

- 19 (38) Winemaking on premises permit – ~~\$400.00~~\$450.00.

20 ..."

21 **SECTION 8.** Sections 2 and 7 of this act becomes effective October 1, 2007,
22 and applies to permits issued on or after that date. The remainder of this act is effective
23 when it becomes law.



SENATE BILL 838: ABC Law Changes.-AB

BILL ANALYSIS

Committee:	Senate Ref to Commerce, Small Business and Entrepreneurship. If fav, re-ref to Finance	Date:	July 10, 2007
Introduced by:	Sen. Bingham	Summary by:	O. Walker Reagan
Version:	PCS to First Edition S838-CSMAf-12		Committee Co-Counsel Denise Huntley Committee Staff

SUMMARY: *The Proposed Committee Substitute for Senate Bill 838 makes various ABC law changes as requested by the ABC Commission.*

BILL ANALYSIS AND CURRENT LAW:

Section 1 permits the Alcohol Beverage Commission (Commission) to issue off-premises malt beverage and unfortified wine permits to incorporated municipalities which have voted to permit the sale of mixed beverages, regardless of other local acts concerning sales of alcoholic beverages. Currently, the Commission may only issue these permits to townships which have voted to permit the sale of malt beverages or unfortified wine.

Section 2 adds to the list of requirements one must meet in order to be eligible to receive and hold an ABC permit, a requirement that a permittee be a United States citizen with a valid social security number or, if not a citizen, must present valid documentation demonstrating legal presence in the United States.

Section 3 Failure to pay the annual registration and inspection fee shall result in a suspension of the permit until the fee is received by the Commission and the permit is reinstated. Currently, failure to pay the annual registration and inspection fee results in a revocation of the permit.

Section 4 allows the Commission to issue limited permits to units of local government, nonprofit organizations or political organizations to sell alcoholic beverages at a ticketed event held to allow the unit of local government or organization to raise funds, including mixed beverages. Currently, these groups are only permitted to serve wine, malt beverages and spirituous liquor, but not mixed beverages.

Section 5 corrects a technical error by removing an unnecessary period in the list of commercial permits the Commission may issue.

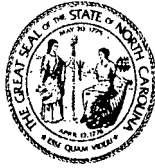
Section 6 expands the authorization of holders of unfortified winery permits to allow winemaking on premises with a winemaking on premises permit.

Section 7 increases the one-time application fee for winemaking on premises permit from \$400 to \$450.

EFFECTIVE DATE: Sections 2 and 7 become effective October 1, 2007, and apply to permits issued on or after that date. The remainder of the act is effective when it becomes law.

G.S. 18B-1001(17) Winemaking on Premises Permit. – A permit may be issued to a business, located in a jurisdiction where the sale of unfortified wine is allowed, where individual customers who are 21 years old or older may purchase ingredients and rent the equipment, time, and space to make unfortified wine for personal use in amounts set forth in 27 C.F.R. § 24.75. Except for wine produced for testing equipment or recipes and samples pursuant to this subdivision, the permit holder shall not engage in the actual production or manufacture of wine. Samples may be consumed on the premises only by a person who has a nonrefundable contract to ferment at the premises, and the samples may not exceed one ounce per sample. All wine produced at a winemaking on premises facility shall be removed from the premises by the customer and may only be used for home consumption and the personal use of the customer.

S0838e1-SMTB-CSMAf-12



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 838

S838-ARU-18 [v.1]

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

Page 1 of 1

Date 7/10, 2007

Comm. Sub. [YES]
Amends Title [NO]
S838-CSMAf-12

Senator P. Boykin

- 1 moves to amend the bill on page 4, line 22,
2 by deleting the word "applies" and substituting the word "apply".
3

SIGNED [Signature]
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-10-07

S. B. No. 838

Amendment No. #2

COMMITTEE SUBSTITUTE ✓ S838-CSMAF-12 [v.2]

(to be filled in by
Principal Clerk)

Rep.) Jacumin

Sen.)

1 moves to amend the bill on page 3, line 28

2 () WHICH CHANGES THE TITLE

3 by inserting the following language at the end of the
4 sentence:

5 "A permit for this purpose shall not be issued
6 for the sale of any kind of alcoholic beverage
7 in a jurisdiction where the sale of that alcoholic
8 beverage is not lawful."

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18
19

SIGNED Jim Jacumin

ADOPTED _____ FAILED X TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

DATE 7-10-07

S. B. No. 838

Amendment No. #3

COMMITTEE SUBSTITUTE SB38-CSMAF-12 [v.2]

(to be filled in by
Principal Clerk)

Rep.) PHIL BERGER

Sen.)

1 moves to amend the bill on page 3, lines 8-28

2 () WHICH CHANGES THE TITLE

3 by DELETING THE LINES AND RENUMBERING THE

4 REMAINING BILL SECTIONS ACCORDINGLY

5 _____

6 _____

7 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED

[Signature]

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 838

PROPOSED COMMITTEE SUBSTITUTE S838-PCS85349-MAf-12

Short Title: ABC Law Changes.-AB

(Public)

Sponsors:

Referred to:

March 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ISSUANCE OF OFF-PREMISES MALT BEVERAGE
AND UNFORTIFIED WINE PERMITS TO INCORPORATED
MUNICIPALITIES AFTER AN ELECTION ALLOWING THE SALE OF MIXED
BEVERAGES, TO REQUIRE AN APPLICANT FOR AN ABC PERMIT TO BE A
UNITED STATES CITIZEN OR LEGALLY PRESENT IN THE UNITED
STATES FOR A PERMIT TO BE ISSUED, TO CHANGE ABC PERMIT
REGISTRATION AND INSPECTION FEE REVOCATIONS TO SUSPENSIONS,
TO ALLOW LOCAL GOVERNMENTS AND NONPROFIT ORGANIZATIONS
TO HAVE SPECIAL ONE-TIME PERMITS TO SELL AND SERVE MALT
BEVERAGES, WINES, MIXED BEVERAGES, AND SPIRITUOUS LIQUORS
AT FUND-RAISERS, TO MAKE TECHNICAL CORRECTIONS TO
COMMERCIAL PERMITS, TO ALLOW WINEMAKING ON PREMISES
PERMITS AT UNFORTIFIED WINERIES, AND TO CHANGE THE FEE FOR
WINEMAKING ON PREMISES PERMITS AS RECOMMENDED BY THE
ALCOHOLIC BEVERAGE CONTROL COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-603(d)(3) reads as rewritten:

"(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages."

1 **SECTION 2.** G.S. 18B-900(a) reads as rewritten:

2 **"§ 18B-900. Qualifications for permit.**

3 (a) Requirements. – To be eligible to receive and to hold an ABC permit, a
4 person shall:

- 5 (1) Be at least 21 years old, unless the person is a manager of a business
6 selling only malt beverages and unfortified wine, in which case the
7 person shall be at least 19 years old;
- 8 (2) Be a resident of North Carolina unless:
- 9 a. He is an officer, director or stockholder of a corporate applicant
10 or permittee and is not a manager or otherwise responsible for
11 the day-to-day operation of the business; or
- 12 b. He has executed a power of attorney designating a qualified
13 resident of this State to serve as attorney in fact for the purposes
14 of receiving service of process and managing the business for
15 which permits are sought; or
- 16 c. He is applying for a nonresident malt beverage vendor permit, a
17 nonresident wine vendor permit, or a vendor representative
18 permit;
- 19 (3) Not have been convicted of a felony within three years, and, if
20 convicted of a felony before then, shall have had his citizenship
21 restored;
- 22 (4) Not have been convicted of an alcoholic beverage offense within two
23 years;
- 24 (5) Not have been convicted of a misdemeanor controlled substance
25 offense within two years; and
- 26 (6) Not have had an alcoholic beverage permit revoked within three years,
27 except where the revocation was based solely on a permittee's failure
28 to pay the annual registration and inspection fee required in
29 G.S. 18B-903(b1).
- 30 (7) Not have, whether as an individual or as an officer, director,
31 shareholder or manager of a corporate permittee, an unsatisfied
32 outstanding final judgment that was entered against him in an action
33 under Article 1A of this Chapter.
- 34 (8) Be a United States citizen with a valid social security number or, if not
35 a citizen of the United States, present valid documentation
36 demonstrating legal presence in the United States and that
37 documentation is issued to the applicant under the authority of the
38 United States government.

39 To avoid undue hardship, however, the Commission may decline to take action under
40 G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5)."

41 **SECTION 3.** G.S. 18B-903(b1) reads as rewritten:

42 "(b1) Registration. – Each person holding a malt beverage, fortified wine, or
43 unfortified wine permit issued pursuant to G.S. 18B-902(d)(1) through
44 G.S. 18B-902(d)(6) shall register by May 1 of each year on a form provided by the

Commission, in order to provide information needed by the State in enforcing this Chapter and to support the costs of that enforcement. The registration required by this subsection shall be accompanied by an annual registration and inspection fee of two hundred dollars (\$200.00) for each permit held. The fee shall be paid by May 1 of each year. A registration fee shall not be refundable. Failure to pay the annual registration and inspection fee shall result in ~~revocation of the permit~~ a suspension of the permit until the registration fee is received by the Commission and the permits are reinstated."

SECTION 4. G.S. 18B-1100 reads as rewritten:

"§ 18B-1100. Commercial permits.

The Commission may issue the following commercial permits:

- (1) Unfortified winery
- (2) Fortified winery
- (3) Limited winery
- (4) Brewery
- (5) Distillery
- (6) Fuel alcohol
- (7) Wine importer
- (8) Wine wholesaler
- (9) Malt beverages importer
- (10) Malt beverages wholesaler
- (11) Bottler
- (12) Salesman
- (13) Vendor representative
- (14) Nonresident malt beverage vendor
- (15) Nonresident wine vendor
- (16) Winery special show
- (17) Liquor importer/bottler permit
- (18) Cider and vinegar ~~manufacturer~~ manufacturer
- (19) Wine producer ~~permit~~ permit."

SECTION 5. G.S. 18B-1101 is amended by adding a new subdivision to read:

"§ 18B-1101. Authorization of unfortified winery permit.

The holder of an unfortified winery permit may:

- ...
- (8) Allow winemaking on premises as allowed by a permit issued pursuant to G.S. 18B-1001(17).

...."

SECTION 6. G.S. 18B-902(d) reads as rewritten:

"(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

- ...
- (38) Winemaking on premises permit – ~~\$400.00~~ \$450.00.

...."

1 **SECTION 7.** Sections 2 and 6 of this act become effective October 1, 2007,
2 and apply to permits issued on or after that date. The remainder of this act is effective
3 when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 588*

Short Title: Update the Unauthorized Insurers Laws.-AB

(Public)

Sponsors: Representative Goforth.

Referred to: Insurance.

March 13, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO UPDATE AND IMPROVE LAWS COVERING UNAUTHORIZED
3 INSURERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 58-28-45 reads as rewritten:

6 "**§ 58-28-45. Uniform Unauthorized Insurers Act. Insurers; prohibited acts.**

7 (a) No ~~person, corporation, association or partnership~~ person shall in this State
8 act as agent for any insurer not authorized to transact business in this State, or negotiate
9 for or place or aid in placing insurance coverage in this State for another with any such
10 insurer.

11 (b) No ~~person, corporation, association or partnership~~ person shall in this State
12 aid any unauthorized insurer in effecting insurance or in transacting insurance business
13 in this State, either by fixing rates, by adjusting or investigating losses, by inspecting or
14 examining risks, by acting as attorney-in-fact or as attorney for service for process, or
15 otherwise, except as provided in ~~subsection (e) hereof~~ this section or in G.S. 58-16-35.

16 (c) No ~~person, corporation, association or partnership~~ person shall make,
17 negotiate for or place, or aid in negotiating or placing any insurance contract in this
18 State for another who is an applicant for insurance covering any property or risk in
19 another state, territory or district of the United States with any insurer not authorized to
20 transact insurance business in the state, territory or district wherein such property or risk
21 or any part thereof is located.

22 (d) ~~The provisions of the three foregoing subsections~~ Subsections (a), (b), and
23 (c) of this section do not apply to contracts of reinsurance, or to contracts of insurance
24 made through surplus lines licensees as provided in Article 21 of this Chapter, nor do
25 they apply to any insurer not authorized in this State, or its representatives, in
26 investigating, adjusting losses or otherwise complying in this State with the terms of its
27 insurance contracts made in a state wherein the insurer was authorized; provided, the
28 property or risk insured under such contracts at the time such contract was issued was

1 located in such other state. A motor vehicle used and kept garaged principally in another
2 state shall be deemed to be located in such state.

3 (e) (1) Repealed by Session Laws 1985, c. 666, s. 40.

4 (2) Such service of process shall be made by delivering and leaving with
5 the Commissioner or to some person in apparent charge of his office
6 two copies thereof and the payment to him of such fees as may be
7 prescribed by law. The Commissioner shall forthwith mail by
8 registered mail one of the copies of such process to the defendant at its
9 last known principal place of business, and shall keep a record of all
10 such process so served upon him. Such service of process is sufficient
11 provided notice of such service and a copy of the process are sent
12 within 10 days thereafter by registered mail by plaintiff's attorney to
13 the defendant at its last known principal place of business, and the
14 defendant's receipt, or receipt issued by the post office with which the
15 letter is registered, showing the name of the sender of the letter and the
16 name and address of the person to whom the letter is addressed, and
17 the affidavit of plaintiff's attorney showing a compliance herewith are
18 filed with the clerk of the court in which such action is pending on or
19 before the date the defendant is required to appear, or within such
20 further time as the court may allow. However, no plaintiff or
21 complainant shall be entitled to a judgment by default under this
22 subdivision (2) until the expiration of 30 days from the date of the
23 filing of the affidavit of compliance.

24 (3) Service of process in any such action, suit or proceeding shall be in
25 addition to the manner provided in the preceding subdivision (2) be
26 valid if served upon any person within this State who, in this State on
27 behalf of such insurer, is

28 a. Soliciting insurance, or

29 b. Making any contract of insurance or issuing or delivering any
30 policies or written contracts of insurance, or

31 c. Collecting or receiving any premium for insurance; and a copy
32 of such process is sent within 10 days thereafter by registered
33 mail by plaintiff's attorney to the defendant at the last known
34 principal place of business of the defendant, and the defendant's
35 receipt, or the receipt issued by the post office with which the
36 letter is registered, showing the name of the sender of the letter
37 and the name and address of the person to whom the letter is
38 addressed, and the affidavit of plaintiff's attorney showing a
39 compliance herewith are filed with the clerk of the court in
40 which such action is pending on or before the date the
41 defendant is required to appear, or within such further time as
42 the court may allow.

d. Nothing in this subsection (e) shall limit or abridge the right to serve process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(f) No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this State to enforce any right, claim or demand arising out of the transaction of business in this State until such insurer shall have obtained a license to transact insurance business in this State. Nothing in this subsection shall be construed to require an unauthorized insurance company to obtain a license before instituting or filing, or causing to be instituted or filed, any suit, action or proceeding either in connection with any of its investments in this State or in connection with any contract issued by it at a time when it was authorized to do business in the state where such contract was issued.

(g) (1) Before any unauthorized insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either

a. File with the clerk of the court in which such action, suit or proceeding is pending a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action or

b. Procure a license to transact the business of insurance in this State.

(2) The court in any action, suit or proceeding in which service is made in the manner prescribed in subdivisions (2) and (3) of subsection (e) may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (g) and to defend such action.

(3) Nothing in subdivision (1) of this subsection (g) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivisions (2) and (3) of subsection (e) on the ground either

a. That no policy or contract of insurance has been issued or delivered to a citizen or resident of this State or to a corporation authorized to do business therein, or

b. That such insurer has not been transacting business in this State, or

c. That the person on whom service was made pursuant to subdivision (3) of subsection (e) was not doing any of the acts enumerated therein.

(h) Except as provided in G.S. 58-33-95, any ~~person, corporation, association or partnership~~ person violating ~~any of the provisions~~ subsections (a), (b), (c), or (k) of this section shall be guilty of a ~~Class 3 misdemeanor~~ Class H felony and shall ~~only~~ be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). Any person violating subsections (e), (f), and (g) of this section shall be guilty

1 of a Class 1 misdemeanor and shall only be fined not less than one thousand dollars
2 (\$1,000) nor more than five thousand dollars (\$5,000). For the purposes of the fine
3 imposed by this subsection, each day during which a violation occurs constitutes a
4 separate violation.

5 ~~(i) This section shall be so interpreted and construed as to effectuate its general~~
6 ~~purpose to make uniform the law of those states which enact it.~~

7 ~~(j) This section may be cited as the Uniform Unauthorized Insurers Act.~~

8 (k) No person shall act as an officer, director, or controlling person for a person
9 who is engaged in a violation of subsections (a), (b), or (c) of this section. As used in
10 this subsection, "controlling" has the same meaning as in G.S. 58-19-5(2).

11 (l) In addition to any other penalties or remedies provided by law, any person
12 who violates this section shall be strictly liable for any losses or unpaid claims if an
13 unauthorized insurer fails to pay in full or in part any claim or loss within the provisions
14 of any insurance contract issued by or on behalf of the unauthorized insurer in violation
15 of this Article. The liability imposed by this subsection shall be joint and several if more
16 than one person violates this section.

17 (m) A civil action may be filed under this section regardless of whether a criminal
18 action is brought or a criminal conviction is obtained for the act alleged in the civil
19 action."

20 SECTION 2. G.S. 58-28-20(a) reads as rewritten:

21 "(a) Whenever the Commissioner has reasonable grounds to believe that any
22 person is violating or is about to violate G.S. 58-28-5, G.S. 58-28-5 or G.S. 58-33-95,
23 the Commissioner may, after notice and opportunity for hearing, make written findings
24 and issue and cause to be served upon the person an order to cease and desist violating
25 G.S. 58-28-5, G.S. 58-28-5, G.S. 58-28-45, or G.S. 58-33-95."

26 SECTION 3. G.S. 58-28-20(d) reads as rewritten:

27 "(d) Whenever the Commissioner has evidence that any person has or is violating
28 G.S. 58-28-5, G.S. 58-28-5 or G.S. 58-28-45, or has or is violating any order or
29 requirement of the Commissioner issued by the Commissioner under this Article, and
30 that the interests of policyholders, creditors, or the public may be irreparably harmed by
31 delay, the Commissioner may issue an emergency cease and desist order that shall
32 become effective on the date specified in the order or upon service of a certified copy of
33 the order upon the person ordered to cease and desist, whichever is later. The
34 emergency cease and desist order shall also include a notice of hearing, which shall be
35 conducted as provided under Article 3A of Chapter 150B of the General Statutes.
36 However, the person ordered to cease and desist under this subsection may request and
37 shall be granted an expedited review of the order. The emergency order shall remain in
38 effect prior to and during the proceedings, unless modified by the Commissioner as
39 provided under subsection (b) of this section."

40 SECTION 4. G.S. 58-33-95(a)(1) reads as rewritten:

41 "(1) Is the representative of that insurer and shall be strictly liable for any
42 losses or unpaid claims if an unauthorized insurer fails to pay in full or
43 in part any claim or loss within the provisions of any insurance
44 contract sold, directly or indirectly, by or through that person or entity

1 on behalf of the unauthorized insurer. The liability imposed by this
2 subsection shall be joint and several if more than one person violates
3 this section."

4 **SECTION 5.** If any section or provision of this act is declared
5 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
6 validity of the act as a whole or any part other than the part so declared to be
7 unconstitutional, preempted, or otherwise invalid.

8 **SECTION 6.** This act becomes effective December 1, 2007, and applies to
9 offenses or acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 588*
PROPOSED SENATE COMMITTEE SUBSTITUTE H588-CSR-48 [v.3]

7/9/2007 4:45:16 PM

Short Title: Update the Unauthorized Insurers Laws.-AB

(Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED
AN ACT TO UPDATE AND IMPROVE LAWS COVERING UNAUTHORIZED
INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-28-45 reads as rewritten:

"§ 58-28-45. ~~Uniform Unauthorized Insurers Act.~~ Insurers; prohibited acts.

(a) ~~No person, corporation, association or partnership~~ person shall in this State act as agent for any insurer not authorized to transact business in this State, or negotiate for or place or aid in placing insurance coverage in this State for another with any such insurer.

(b) ~~No person, corporation, association or partnership~~ person shall in this State aid any unauthorized insurer in effecting insurance or in transacting insurance business in this State, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service for process, or otherwise, except as provided in ~~subsection (e) hereof.~~ this section or in G.S. 58-16-35.

(c) ~~No person, corporation, association or partnership~~ person shall make, negotiate for or place, or aid in negotiating or placing any insurance contract in this State for another who is an applicant for insurance covering any property or risk in another state, territory or district of the United States with any insurer not authorized to transact insurance business in the state, territory or district wherein such property or risk or any part thereof is located.

(d) ~~The provisions of the three foregoing subsections~~ Subsections (a), (b), and (c) of this section do not apply to contracts of reinsurance, or to contracts of insurance made through surplus lines licensees as provided in Article 21 of this Chapter, nor do they apply to any insurer not authorized in this State, or its representatives, in investigating, adjusting losses or otherwise complying in this State with the terms of its insurance contracts made in a state wherein the insurer was authorized; provided, the property or risk insured under such contracts at the time such contract was issued was

1 located in such other state. A motor vehicle used and kept garaged principally in another
2 state shall be deemed to be located in such state.

3 (e) (1) Repealed by Session Laws 1985, c. 666, s. 40.

4 (2) Such service of process shall be made by delivering and leaving with
5 the Commissioner or to some person in apparent charge of his office
6 two copies thereof and the payment to him of such fees as may be
7 prescribed by law. The Commissioner shall forthwith mail by
8 registered mail one of the copies of such process to the defendant at its
9 last known principal place of business, and shall keep a record of all
10 such process so served upon him. Such service of process is sufficient
11 provided notice of such service and a copy of the process are sent
12 within 10 days thereafter by registered mail by plaintiff's attorney to
13 the defendant at its last known principal place of business, and the
14 defendant's receipt, or receipt issued by the post office with which the
15 letter is registered, showing the name of the sender of the letter and the
16 name and address of the person to whom the letter is addressed, and
17 the affidavit of plaintiff's attorney showing a compliance herewith are
18 filed with the clerk of the court in which such action is pending on or
19 before the date the defendant is required to appear, or within such
20 further time as the court may allow. However, no plaintiff or
21 complainant shall be entitled to a judgment by default under this
22 subdivision (2) until the expiration of 30 days from the date of the
23 filing of the affidavit of compliance.

24 (3) Service of process in any such action, suit or proceeding shall be in
25 addition to the manner provided in the preceding subdivision (2) be
26 valid if served upon any person within this State who, in this State on
27 behalf of such insurer, is

- 28 a. Soliciting insurance, or
29 b. Making any contract of insurance or issuing or delivering any
30 policies or written contracts of insurance, or
31 c. Collecting or receiving any premium for insurance; and a copy
32 of such process is sent within 10 days thereafter by registered
33 mail by plaintiff's attorney to the defendant at the last known
34 principal place of business of the defendant, and the defendant's
35 receipt, or the receipt issued by the post office with which the
36 letter is registered, showing the name of the sender of the letter
37 and the name and address of the person to whom the letter is
38 addressed, and the affidavit of plaintiff's attorney showing a
39 compliance herewith are filed with the clerk of the court in
40 which such action is pending on or before the date the
41 defendant is required to appear, or within such further time as
42 the court may allow.

d. Nothing in this subsection (e) shall limit or abridge the right to serve process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(f) No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this State to enforce any right, claim or demand arising out of the transaction of business in this State until such insurer shall have obtained a license to transact insurance business in this State. Nothing in this subsection shall be construed to require an unauthorized insurance company to obtain a license before instituting or filing, or causing to be instituted or filed, any suit, action or proceeding either in connection with any of its investments in this State or in connection with any contract issued by it at a time when it was authorized to do business in the state where such contract was issued.

(g) (1) Before any unauthorized insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either

a. File with the clerk of the court in which such action, suit or proceeding is pending a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action or

b. Procure a license to transact the business of insurance in this State.

(2) The court in any action, suit or proceeding in which service is made in the manner prescribed in subdivisions (2) and (3) of subsection (e) may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (g) and to defend such action.

(3) Nothing in subdivision (1) of this subsection (g) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivisions (2) and (3) of subsection (e) on the ground either

a. That no policy or contract of insurance has been issued or delivered to a citizen or resident of this State or to a corporation authorized to do business therein, or

b. That such insurer has not been transacting business in this State, or

c. That the person on whom service was made pursuant to subdivision (3) of subsection (e) was not doing any of the acts enumerated therein.

(h) Except as provided in G.S. 58-33-95, any ~~person, corporation, association or partnership~~ person violating any of the provisions ~~subsections (a), (b), (c), or (k) of this section~~ shall be guilty of a ~~Class 3 misdemeanor~~ Class H felony and shall ~~only be~~ fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). Any person violating subsections (e), (f), and (g) of this section shall be guilty

1 of a Class 1 misdemeanor and shall only be fined not less than one thousand dollars
2 (\$1,000) nor more than five thousand dollars (\$5,000). For the purposes of the fine
3 imposed by this subsection, each day during which a violation occurs constitutes a
4 separate violation.

5 (i) ~~This section shall be so interpreted and construed as to effectuate its general~~
6 ~~purpose to make uniform the law of those states which enact it.~~

7 (j) ~~This section may be cited as the Uniform Unauthorized Insurers Act.~~

8 (k) No person shall act as an officer, director, or controlling person for a person
9 who is engaged in a violation of subsections (a), (b), or (c) of this section. As used in
10 this subsection, "controlling" has the same meaning as in G.S. 58-19-5(2).

11 (l) In addition to any other penalties or remedies provided by law, any person
12 who violates this section shall be strictly liable for any losses or unpaid claims if an
13 unauthorized insurer fails to pay in full or in part any claim or loss within the provisions
14 of any insurance contract issued by or on behalf of the unauthorized insurer in violation
15 of this Article. The liability imposed by this subsection shall be joint and several if more
16 than one person violates this section.

17 (m) A civil action may be filed under this section regardless of whether a criminal
18 action is brought or a criminal conviction is obtained for the act alleged in the civil
19 action."

20 **SECTION 2.** G.S. 58-28-20(a) reads as rewritten:

21 "(a) Whenever the Commissioner has reasonable grounds to believe that any
22 person is violating or is about to violate ~~G.S. 58-28-5,~~ G.S. 58-28-5 or G.S. 58-33-95,
23 the Commissioner may, after notice and opportunity for hearing, make written findings
24 and issue and cause to be served upon the person an order to cease and desist violating
25 ~~G.S. 58-28-5,~~ G.S. 58-28-5, G.S. 58-28-45, or G.S. 58-33-95."

26 **SECTION 3.** G.S. 58-28-20(d) reads as rewritten:

27 "(d) Whenever the Commissioner has evidence that any person has or is violating
28 ~~G.S. 58-28-5,~~ G.S. 58-28-5 or G.S. 58-28-45, or has or is violating any order or
29 requirement of the Commissioner issued by the Commissioner under this Article, and
30 that the interests of policyholders, creditors, or the public may be irreparably harmed by
31 delay, the Commissioner may issue an emergency cease and desist order that shall
32 become effective on the date specified in the order or upon service of a certified copy of
33 the order upon the person ordered to cease and desist, whichever is later. The
34 emergency cease and desist order shall also include a notice of hearing, which shall be
35 conducted as provided under Article 3A of Chapter 150B of the General Statutes.
36 However, the person ordered to cease and desist under this subsection may request and
37 shall be granted an expedited review of the order. The emergency order shall remain in
38 effect prior to and during the proceedings, unless modified by the Commissioner as
39 provided under subsection (b) of this section."

40 **SECTION 4.** G.S. 58-28-5(a) reads as rewritten:

41 "(a) Except as otherwise provided in this section, it is unlawful for any company
42 to enter into a contract of insurance as an insurer or to transact insurance business in this
43 State as set forth in G.S. 58-28-10, without a license issued by the Commissioner. This
44 section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and delivered in a state in which the company was authorized to transact business.
- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

SECTION 5. G.S. 58-33-95(a)(1) reads as rewritten:

- "(1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance

1 contract sold, directly or indirectly, by or through that person or entity
2 on behalf of the unauthorized insurer. The liability imposed by this
3 subsection shall be joint and several if more than one person violates
4 this section."

5 **SECTION 6.** If any section or provision of this act is declared
6 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
7 validity of the act as a whole or any part other than the part so declared to be
8 unconstitutional, preempted, or otherwise invalid.

9 **SECTION 7.** This act becomes effective December 1, 2007, and applies to
10 offenses or acts committed on or after that date.



HOUSE BILL 588: Update the Unauthorized Insurers Laws.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2007
Introduced by:	Rep. Goforth	Summary by:	Tim Hovis
Version:	PCS to First Edition H588-CSR		Committee Counsel, Ben Popkin, Staff Attorney

SUMMARY: *House Bill 588 would enact revisions to Article 28 (Unauthorized Insurers) of Chapter 58 (Insurance) of the General Statutes. The bill would make the following changes to G. S. 58-28-45, the "Uniform Unauthorized Insurers Act": increase violations of provisions of the Act from Class 3 misdemeanors to either Class H felonies or Class 1 misdemeanors, depending on the subsection violated; hold persons in violation of the Act strictly liable for losses or unpaid claims; allow for filing of civil actions regardless of whether or not criminal claims have been filed or convictions obtained; provide an exception to licensing requirements for captive insurers that insure solely the risk's of the company's parent and affiliated companies.*

House Bill 588 would also amend G.S. 58-28-20 to include violations of G.S. 58-28-45 as violations for which the Commissioner of Insurance may issue a cease and desist order. Finally, HB588 would amend G.S. 58-33-95 to allow for joint and several liability if more than one person violates that section ("Agents personally liable; representing unlicensed company prohibited; penalty").

[As introduced, this bill was identical to S731, as introduced by Sen. Hartsell, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

CURRENT LAW: Article 28 of Chapter 58 of the General Statutes sets forth provisions aiming to "...abate and prevent the practices of unauthorized insurers within the State..." G.S. 58-28-45 "Uniform Unauthorized Insurers Act" prohibits a range of actions (acting as an agent, negotiating contracts, etc.) by a "...person, corporation, association or partnership..." for an unauthorized insurer. Violations of any of the provisions in Article 28 are Class 3 misdemeanors, punishable by fines of between \$1,000 and \$5,000.

BILL ANALYSIS:

Section 1 would make the following changes to G.S. 58-28-45, "Uniform Unauthorized Insurers Act":

- Increase violations of provisions of the Act from Class 3 misdemeanors to either Class H felonies or Class 1 misdemeanors, depending on the subsection violated.
- Provide for strict liability for losses or unpaid claims by persons in violation of the Act.
- Allow for filing of civil actions regardless of whether or not criminal claims have been filed or convictions obtained.

Sections 2 and 3 would amend G.S. 58-28-20 to include violations of G.S. 58-28-45 as violations for which the Commissioner may issue a cease and desist order.

Section 4 would create a new exception to licensing requirements for captive insurers that insure solely the risks of the company's parent and affiliated companies.

House Bill 588

Page 2

Section 5 would amend G.S. 58-33-95 to allow for joint and several liability if more than one person violates that section ("Agents personally liable; representing unlicensed company prohibited; penalty").

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 588

DATE 7/10/07

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE X H588-CSRG-54 [v.2]

(to be filled in by
Principal Clerk)

Rep.) _____

Sen.) _____

1 moves to amend the bill on page 4, line 22

2 () WHICH CHANGES THE TITLE

3 by deleting "G.S. 58-28-5" and substituting ^{the} following:
4 "G.S. 58-28-5, G.S. 58-28-45"

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

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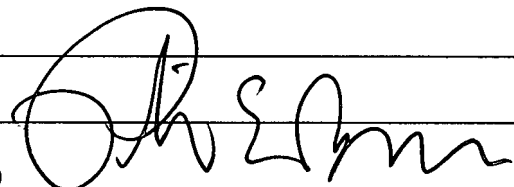
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SIGNED



ADOPTED ☒ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 588*

PROPOSED SENATE COMMITTEE SUBSTITUTE H588-PCS70577-RG-54

Short Title: Update the Unauthorized Insurers Laws.-AB

(Public)

Sponsors:

Referred to:

March 13, 2007

A BILL TO BE ENTITLED

AN ACT TO UPDATE AND IMPROVE LAWS COVERING UNAUTHORIZED INSURERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-28-45 reads as rewritten:

"§ 58-28-45. ~~Uniform Unauthorized Insurers Act.~~ Insurers; prohibited acts.

(a) No ~~person, corporation, association or partnership~~ person shall in this State act as agent for any insurer not authorized to transact business in this State, or negotiate for or place or aid in placing insurance coverage in this State for another with any such insurer.

(b) No ~~person, corporation, association or partnership~~ person shall in this State aid any unauthorized insurer in effecting insurance or in transacting insurance business in this State, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service for process, or otherwise, except as provided in ~~subsection (e) hereof.~~ this section or in G.S. 58-16-35.

(c) No ~~person, corporation, association or partnership~~ person shall make, negotiate for or place, or aid in negotiating or placing any insurance contract in this State for another who is an applicant for insurance covering any property or risk in another state, territory or district of the United States with any insurer not authorized to transact insurance business in the state, territory or district wherein such property or risk or any part thereof is located.

(d) ~~The provisions of the three foregoing subsections~~ Subsections (a), (b), and (c) of this section do not apply to contracts of reinsurance, or to contracts of insurance made through surplus lines licensees as provided in Article 21 of this Chapter, nor do they apply to any insurer not authorized in this State, or its representatives, in investigating, adjusting losses or otherwise complying in this State with the terms of its insurance contracts made in a state wherein the insurer was authorized; provided, the property or risk insured under such contracts at the time such contract was issued was

1 located in such other state. A motor vehicle used and kept garaged principally in another
2 state shall be deemed to be located in such state.

3 (e) (1) Repealed by Session Laws 1985, c. 666, s. 40.

4 (2) Such service of process shall be made by delivering and leaving with
5 the Commissioner or to some person in apparent charge of his office
6 two copies thereof and the payment to him of such fees as may be
7 prescribed by law. The Commissioner shall forthwith mail by
8 registered mail one of the copies of such process to the defendant at its
9 last known principal place of business, and shall keep a record of all
10 such process so served upon him. Such service of process is sufficient
11 provided notice of such service and a copy of the process are sent
12 within 10 days thereafter by registered mail by plaintiff's attorney to
13 the defendant at its last known principal place of business, and the
14 defendant's receipt, or receipt issued by the post office with which the
15 letter is registered, showing the name of the sender of the letter and the
16 name and address of the person to whom the letter is addressed, and
17 the affidavit of plaintiff's attorney showing a compliance herewith are
18 filed with the clerk of the court in which such action is pending on or
19 before the date the defendant is required to appear, or within such
20 further time as the court may allow. However, no plaintiff or
21 complainant shall be entitled to a judgment by default under this
22 subdivision (2) until the expiration of 30 days from the date of the
23 filing of the affidavit of compliance.

24 (3) Service of process in any such action, suit or proceeding shall be in
25 addition to the manner provided in the preceding subdivision (2) be
26 valid if served upon any person within this State who, in this State on
27 behalf of such insurer, is

- 28 a. Soliciting insurance, or
29 b. Making any contract of insurance or issuing or delivering any
30 policies or written contracts of insurance, or
31 c. Collecting or receiving any premium for insurance; and a copy
32 of such process is sent within 10 days thereafter by registered
33 mail by plaintiff's attorney to the defendant at the last known
34 principal place of business of the defendant, and the defendant's
35 receipt, or the receipt issued by the post office with which the
36 letter is registered, showing the name of the sender of the letter
37 and the name and address of the person to whom the letter is
38 addressed, and the affidavit of plaintiff's attorney showing a
39 compliance herewith are filed with the clerk of the court in
40 which such action is pending on or before the date the
41 defendant is required to appear, or within such further time as
42 the court may allow.

d. Nothing in this subsection (e) shall limit or abridge the right to serve process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

(f) No unauthorized insurer shall institute or file, or cause to be instituted or filed, any suit, action or proceeding in this State to enforce any right, claim or demand arising out of the transaction of business in this State until such insurer shall have obtained a license to transact insurance business in this State. Nothing in this subsection shall be construed to require an unauthorized insurance company to obtain a license before instituting or filing, or causing to be instituted or filed, any suit, action or proceeding either in connection with any of its investments in this State or in connection with any contract issued by it at a time when it was authorized to do business in the state where such contract was issued.

(g) (1) Before any unauthorized insurer shall file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either

a. File with the clerk of the court in which such action, suit or proceeding is pending a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action or

b. Procure a license to transact the business of insurance in this State.

(2) The court in any action, suit or proceeding in which service is made in the manner prescribed in subdivisions (2) and (3) of subsection (e) may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subdivision (1) of this subsection (g) and to defend such action.

(3) Nothing in subdivision (1) of this subsection (g) shall be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subdivisions (2) and (3) of subsection (e) on the ground either

a. That no policy or contract of insurance has been issued or delivered to a citizen or resident of this State or to a corporation authorized to do business therein, or

b. That such insurer has not been transacting business in this State, or

c. That the person on whom service was made pursuant to subdivision (3) of subsection (e) was not doing any of the acts enumerated therein.

(h) Except as provided in G.S. 58-33-95, any ~~person, corporation, association or partnership~~ person violating any of the provisions ~~subsection (a), (b), (c), or (k)~~ of this section shall be guilty of a ~~Class 3 misdemeanor~~ Class H felony and shall ~~only be~~ fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000). Any person violating subsections (e), (f), and (g) of this section shall be guilty

1 of a Class 1 misdemeanor and shall only be fined not less than one thousand dollars
2 (\$1,000) nor more than five thousand dollars (\$5,000). For the purposes of the fine
3 imposed by this subsection, each day during which a violation occurs constitutes a
4 separate violation.

5 (i) ~~This section shall be so interpreted and construed as to effectuate its general~~
6 ~~purpose to make uniform the law of those states which enact it.~~

7 (j) ~~This section may be cited as the Uniform Unauthorized Insurers Act.~~

8 (k) No person shall act as an officer, director, or controlling person for a person
9 who is engaged in a violation of subsection (a), (b), or (c) of this section. As used in this
10 subsection, "controlling" has the same meaning as in G.S. 58-19-5(2).

11 (l) In addition to any other penalties or remedies provided by law, any person
12 who violates this section shall be strictly liable for any losses or unpaid claims if an
13 unauthorized insurer fails to pay in full or in part any claim or loss within the provisions
14 of any insurance contract issued by or on behalf of the unauthorized insurer in violation
15 of this Article. The liability imposed by this subsection shall be joint and several if more
16 than one person violates this section.

17 (m) A civil action may be filed under this section regardless of whether a criminal
18 action is brought or a criminal conviction is obtained for the act alleged in the civil
19 action."

20 **SECTION 2.** G.S. 58-28-20(a) reads as rewritten:

21 "(a) Whenever the Commissioner has reasonable grounds to believe that any
22 person is violating or is about to violate ~~G.S. 58-28-5,~~ G.S. 58-28-5, 58-28-45, or
23 58-33-95, the Commissioner may, after notice and opportunity for hearing, make
24 written findings and issue and cause to be served upon the person an order to cease and
25 desist violating ~~G.S. 58-28-5,~~ G.S. 58-28-5, 58-28-45, or 58-33-95."

26 **SECTION 3.** G.S. 58-28-20(d) reads as rewritten:

27 "(d) Whenever the Commissioner has evidence that any person has or is violating
28 ~~G.S. 58-28-5,~~ G.S. 58-28-5 or G.S. 58-28-45, or has or is violating any order or
29 requirement of the Commissioner issued by the Commissioner under this Article, and
30 that the interests of policyholders, creditors, or the public may be irreparably harmed by
31 delay, the Commissioner may issue an emergency cease and desist order that shall
32 become effective on the date specified in the order or upon service of a certified copy of
33 the order upon the person ordered to cease and desist, whichever is later. The
34 emergency cease and desist order shall also include a notice of hearing, which shall be
35 conducted as provided under Article 3A of Chapter 150B of the General Statutes.
36 However, the person ordered to cease and desist under this subsection may request and
37 shall be granted an expedited review of the order. The emergency order shall remain in
38 effect prior to and during the proceedings, unless modified by the Commissioner as
39 provided under subsection (b) of this section."

40 **SECTION 4.** G.S. 58-28-5(a) reads as rewritten:

41 "(a) Except as otherwise provided in this section, it is unlawful for any company
42 to enter into a contract of insurance as an insurer or to transact insurance business in this
43 State as set forth in G.S. 58-28-10, without a license issued by the Commissioner. This
44 section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and delivered in a state in which the company was authorized to transact business.
- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

SECTION 5. G.S. 58-33-95(a)(1) reads as rewritten:

- "(1) Is the representative of that insurer and shall be strictly liable for any losses or unpaid claims if an unauthorized insurer fails to pay in full or in part any claim or loss within the provisions of any insurance

1 contract sold, directly or indirectly, by or through that person or entity
2 on behalf of the unauthorized insurer. The liability imposed by this
3 subsection shall be joint and several if more than one person violates
4 this section."

5 **SECTION 6.** If any section or provision of this act is declared
6 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
7 validity of the act as a whole or any part other than the part so declared to be
8 unconstitutional, preempted, or otherwise invalid.

9 **SECTION 7.** Section 4 of this act is effective when it becomes law. The
10 remainder of this act becomes effective December 1, 2007, and applies to offenses or
11 acts committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 731*

Committee Substitute Favorable 5/2/07

Short Title: Revise Life and Health Insurance Laws.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS PURCHASING ANNUITY PRODUCTS;
ADDRESS PORTABILITY IN ACCIDENT AND HEALTH AND LIFE
INSURANCE; MAKE MINOR CHANGES IN THE LAWS ON MANAGED
CARE EXTERNAL REVIEWS; CLARIFY DEFINITIONS IN LONG-TERM
CARE INSURANCE; ADDRESS SMALL EMPLOYER CARRIER PLAN
ELECTIONS; DEFINE "CRITICAL PERIOD CONVERSION RATIO" FOR
CREDIT INSURANCE; MAKE MISCELLANEOUS AMENDMENTS TO
OTHER PROVISIONS RELATED TO LIFE AND HEALTH INSURANCE; AND
MAKE TECHNICAL CORRECTIONS IN INSURANCE CODE REFERENCES
TO THE TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

PART I. SUITABILITY IN ANNUITY TRANSACTIONS.

SECTION 1.1. Article 60 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 4. Suitability in Annuity Transactions.

"§ 58-60-150. Title and reference.

This Part may be cited as the "Suitability in Annuity Transactions Act".

"§ 58-60-155. Purpose; scope.

(a) The purpose of this Part is to set forth standards and procedures for
recommendations to consumers that result in a transaction involving annuity products so
that the insurance needs and financial objectives of consumers at the time of the
transaction are appropriately addressed.

(b) Nothing in this Part shall be construed to create or imply a private cause of
action for a violation of this Part.

(c) This Part shall apply to any recommendation to purchase or exchange an
annuity made to a consumer by an insurance producer, or an insurer where no producer
is involved, that results in the purchase or exchange recommended.

"§ 58-60-160. Exemptions.

Unless otherwise specifically included, this Part does not apply to recommendations involving any of the following:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part.
- (2) Contracts used to fund any of the following:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).
 - b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer.
 - c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.
 - f. Formal prepaid funeral contracts.

"§ 58-60-165. Definitions.

As used in this Part:

- (1) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
- (2) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).
- (3) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

"§ 58-60-170. Duties of insurers and insurance producers.

(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Before the execution of a purchase or exchange of an annuity resulting from a recommendation, the insurance producer, or the insurer where no producer is involved, shall make reasonable efforts to obtain information about:

- (1) The consumer's financial status.

- (2) The consumer's tax status.
- (3) The consumer's investment objectives.
- (4) Any other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(c) Except as provided under subdivision (1) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection (a) of this section related to any recommendation if a consumer does any of the following:

- (1) Refuses to provide relevant information requested by the insurer or insurance producer. An insurer or insurance producer's recommendation subject to this subdivision shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
- (2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer.
- (3) Fails to provide complete or accurate information.

(d) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Part is established and maintained by complying with subsections (e), (f), and (g) of this section, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures.
- (2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Part.

(e) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Part, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures.
- (2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Part.

(f) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subsection (d) of this section with respect to insurance producers under contract with, or employed by, the third party. An insurer shall make reasonable inquiry to assure that the third party contracting under this subsection is performing the functions required under subsection (d) of this section and shall take any action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- (1) The insurer annually obtains a certification from a third-party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions. No person may

1 provide a certification under this subdivision unless (i) the person is a
2 senior manager with responsibility for the delegated functions; and (ii)
3 the person has a reasonable basis for making the certification.

4 (2) The insurer, based on reasonable selection criteria, periodically selects
5 third parties contracting under this subsection for a review to
6 determine whether the third parties are performing the required
7 functions. The insurer shall perform those procedures to conduct the
8 review that are reasonable under the circumstances.

9 An insurer that contracts with a third party, and that complies with the requirements
10 to supervise the third party pursuant to this subsection, shall have fulfilled its
11 responsibilities under subsection (d) of this section.

12 A general agent or independent agency contracting with an insurer shall promptly,
13 when requested by the insurer pursuant to this subsection, give a certification as
14 described in this subsection or give a clear statement that it is unable to meet the
15 certification criteria.

16 (g) An insurer, general agent, or independent agency is not required by
17 subsections (d) or (e) of this section to:

18 (1) Review, or provide for review of, all insurance producer solicited
19 transactions; or

20 (2) Include in its system of supervision an insurance producer's
21 recommendations to consumers of products other than the annuities
22 offered by the insurer, general agent or independent agency.

23 (h) Compliance with the National Association of Securities Dealers Conduct
24 Rules pertaining to suitability shall satisfy the requirements under this section for the
25 recommendation of variable annuities. However, nothing in this subsection limits the
26 Commissioner's ability to enforce the provisions of this Part.

27 **"§ 58-60-173. Enforcement; penalties for violation.**

28 (a) It is a violation of this Part if the insurance producer or insurer fails to comply
29 with the requirements of G.S. 58-60-170(a) or (b) and the failure is either:

30 (1) Committed willfully; or

31 (2) Committed frequently and repeatedly to indicate a general business
32 practice.

33 (b) Subject to G.S. 58-60-175 and all applicable notice and hearing requirements,
34 the Commissioner shall suspend or revoke the license of an insurance producer or an
35 insurer the Commissioner finds has violated this Part.

36 **"§ 58-60-175. Mitigation of responsibility.**

37 (a) The Commissioner may order:

38 (1) An insurer to take reasonably appropriate corrective action for any
39 consumer harmed by the insurer's, or by its insurance producer's,
40 violation of this Part.

41 (2) An insurance producer to take reasonably appropriate corrective action
42 for any consumer harmed by the insurance producer's violation of this
43 Part.

(3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of this Part.

(b) Any applicable penalty under G.S. 58-2-70 for a violation of subsection (a) or (b) of G.S. 58-60-170 may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered.

"§ 58-60-180. Record keeping.

(a) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this Part may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document."

SECTION 1.2. Article 58 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"§ 58-58-146. Application for annuities required.

Each individual annuity contract shall be issued only upon application of the applicant. Any application or enrollment form is subject to G.S. 58-3-150, and if taken by an agent, shall include the certificate of the agent that the agent has truly and accurately recorded on the application or enrollment form the information provided by the applicant. Every annuity contract subject to this section shall contain as part of the contract the original or reproduction of the application required by this section.

"§ 58-58-147. Surrender fees on death benefits.

No authorized insurer shall deliver or issue for delivery in this State any deferred annuity contract that contains a provision that reduces the death benefit of the contract by a surrender fee when death occurs during the surrender period."

PART II. PORTABILITY IN ACCIDENT AND HEALTH AND LIFE INSURANCE.

SECTION 2.1. G.S. 58-51-15(a)(2)b. reads as rewritten:

"(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

...

- b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy ____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately

preceding the effective date of the person's coverage." ~~Except for the excepted benefits described in G.S. 58-68-25(b), credit~~ Credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with ~~G.S. 58-68-30.~~ G.S. 58-51-17. The excepted benefits described in G.S. 58-68-25(b) are not subject to this requirement for giving credit."

SECTION 2.2. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-51-17. Portability for accident and health insurance.

(a) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.**
- b. Group or individual health insurance coverage.**
- c. Part A or part B of title XVIII of the Social Security Act.**
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.**
- e. Chapter 55 of title 10, United States Code.**
- f. A medical care program of the Indian Health Service or of a tribal organization.**
- g. A State health benefits risk pool.**
- h. A health plan offered under chapter 89 of title 5, United States Code.**
- i. A public health plan (as defined in federal regulations).**
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).**
- k. Title XXI of the Social Security Act (State Children's Health Insurance Program).**

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits as described in G.S. 58-68-25(b). However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section.

(2) Not counting periods before significant breaks in coverage. –

- a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under an individual health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.**

- 1 b. Waiting period not treated as a break in coverage. – For the
2 purposes of sub-subdivision a. of this subdivision and
3 subdivision (b)(3) of this section, any period that an individual
4 is in a waiting period, as defined in G.S. 58-68-30(b)(4)c., for
5 any coverage under an individual health insurance plan shall not
6 be taken into account in determining the continuous period
7 under sub-subdivision a. of this subdivision.
8 c. For an individual who elects COBRA continuation coverage
9 during the second election period provided under the Trade Act
10 of 2002, the days between the date the individual lost group
11 health plan coverage and the first day of the second COBRA
12 election period shall not be considered when determining
13 whether a significant break in coverage has occurred.
14 (3) Method of crediting coverage. – An individual health insurer shall
15 count a period of creditable coverage without regard to the specific
16 benefits covered during the period.
17 (4) Establishment of period. – Periods of creditable coverage for an
18 individual shall be established through presentation of certifications
19 described in subsection (c) of this section or in another manner that is
20 specified in regulations.
21 (5) Determination of creditable coverage. –
22 a. Determination within reasonable time. – If an individual health
23 insurer receives creditable coverage information under
24 subsection (c) of this section, the insurer shall, within a
25 reasonable time following receipt of the information, make a
26 determination regarding the amount of the individual's
27 creditable coverage and the length of any exclusion that
28 remains. Whether this determination is made within a
29 reasonable time depends on the relevant facts and
30 circumstances. Relevant facts and circumstances include
31 whether a plan's application of a preexisting condition exclusion
32 would prevent an individual from having access to urgent
33 medical care.
34 b. No time limit on presenting evidence of creditable coverage. –
35 An individual health insurer shall not impose any limit on the
36 amount of time that an individual has to present a certificate or
37 other evidence of creditable coverage.
38 (b) Exceptions. –
39 (1) Exclusion not applicable to certain newborns. – Subject to subdivision
40 (3) of this subsection, an individual health insurer shall not impose any
41 preexisting condition exclusion in the case of an individual who, as of
42 the last day of the 30-day period beginning with the individual's date
43 of birth, is covered under creditable coverage.

(2) Exclusion not applicable to certain adopted children. – Subject to subdivision (3) of this subsection, a group health insurer shall not impose any preexisting condition exclusion in the case of a child who is adopted or placed for adoption before attaining 18 years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence does not apply to coverage before the date of the adoption or placement for adoption.

(3) Loss if break in coverage. – Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(c) Certifications and Disclosure of Coverage. –

(1) In general. – An individual health insurer shall provide the certification described in this subdivision (i) at the time an individual ceases to be covered under the plan, and (ii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) of this subdivision, whichever is later.

(2) Certification. – The certification described in this subdivision is a written certification of (i) the period of creditable coverage of the individual under the plan and (ii) any waiting period and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan."

SECTION 2.3. G.S. 58-68-30(c) reads as rewritten:

"(c) **Rules Relating to Crediting Previous Coverage. –**

(1) **Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:**

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
- b. Group or individual health insurance coverage.
- c. Part A or part B of title XVIII of the Social Security Act.
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- e. Chapter 55 of title 10, United States Code.
- f. A medical care program of the Indian Health Service or of a tribal organization.
- g. A State health benefits risk pool.
- h. A health plan offered under chapter 89 of title 5, United States Code.
- i. A public health plan (as defined in federal regulations).
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).

k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered credible coverage for purposes of this section and G.S. 58-51-15(a)(2)b.

(2) Not counting periods before significant breaks in coverage. –

a. In general. – A period of credible coverage shall not be counted, with respect to enrollment of an individual under a group health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any credible coverage.

b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (d)(4) of this subsection, any period that an individual is in a waiting period for any coverage under a group health insurance plan or is in an affiliation period shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.

c. Time spent on short term limited duration health insurance not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision, any period that an individual is enrolled on a short term limited duration health insurance policy shall not be taken into account in determining the continuous period under sub-subdivision. a. of this subdivision so long as the period of time spent on the short term limited duration health insurance policy or policies does not exceed 12 months.

d. For an individual who elects COBRA continuation coverage during the second election period provided under the Trade Act of 2002, the days between the date the individual lost group health plan coverage and the first day of the second COBRA election period shall not be considered when determining whether a significant break in coverage has occurred.

(3) Method of crediting coverage. –

a. Standard method. – Except as otherwise provided under sub-subdivision b. of this subdivision for the purposes of applying subdivision (a)(3) of this subsection, a group health insurer shall count a period of credible coverage without regard to the specific benefits covered during the period.

b. Election of alternative method. – A group health insurer may elect to apply subdivision (a)(3) of this subsection based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations rather than as

provided under sub-subdivision a. of this subdivision. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

c. Health insurer notice. – In the case of an election under sub-subdivision b. of this subdivision with respect to health insurance coverage in the small or large group market, the health insurer: (i) shall prominently state in any disclosure statements concerning the coverage, and to each employer at the time of the offer or sale of the coverage, that the health insurer has made the election, and (ii) shall include in the statements a description of the effect of the election.

(4) Establishment of period. – Periods of creditable coverage for an individual shall be established through presentation of certifications described in subsection (e) of this section or in another manner that is specified in federal regulations.

(5) Determination of creditable coverage. –

a. Determination within reasonable time. – If a group health insurer receives creditable coverage information under subsection (e) of this section, the group health insurer shall, within a reasonable time following receipt of the information, make a determination regarding the amount of the individual's creditable coverage and the length of any exclusion that remains. Whether this determination is made within a reasonable time depends on the relevant facts and circumstances. Relevant facts and circumstances include whether a plan's application of a preexisting condition exclusion would prevent an individual from having access to urgent medical care.

b. No time limit on presenting evidence of creditable coverage. – A group health insurer shall not impose any limit on the amount of time that an individual has to present a certificate or other evidence of creditable coverage."

SECTION 2.4. G.S. 58-68-30(f) reads as rewritten:

"(f) Special Enrollment Periods. –

(1) Individuals losing other coverage. – A group health insurer shall permit an employee who is eligible, but not enrolled, for coverage under the terms of the plan (or a dependent of the employee if the dependent is eligible, but not enrolled, for coverage under the terms) to enroll for coverage under the terms of the plan if each of the following conditions is met:

- 1 a. The employee or dependent was covered under an ERISA
2 group health plan or had health insurance coverage at the time
3 coverage was previously offered to the employee or dependent.
- 4 b. The employee stated in writing at the time that coverage under
5 the group health plan or health insurance coverage was the
6 reason for declining enrollment, but only if the health insurer
7 required the statement at the time and provided the employee
8 with notice of the requirement and the consequences of the
9 requirement at the time.
- 10 c. With respect to the employee's or dependent's coverage
11 described in sub-subdivision a. of this subsection: (i) the
12 coverage was under a COBRA continuation provision and the
13 coverage under the provision was exhausted; (ii) the coverage
14 was not under that provision and either the coverage was
15 terminated because of loss of eligibility for the coverage,
16 including legal separation, divorce, cessation of dependent
17 status (such as attaining the maximum age to be eligible as a
18 dependent child under the plan), death of an employee,
19 termination of employment, reduction in the number of hours of
20 employment, and any loss of eligibility for coverage after a
21 period that is measured by reference to any of the foregoing;
22 (iii) employer contributions toward the coverage were
23 terminated; (iv) in the case of coverage offered through an
24 arrangement that does not provide benefits to individuals who
25 no longer reside, live, or work in a service area, there has been
26 loss of coverage because an individual no longer resides, lives,
27 or works in the service area (whether or not within the choice of
28 the individual), and no other benefit package is available to the
29 individual; (v) an individual incurs a claim that would meet or
30 exceed a lifetime limit on all benefits; or (vi) a plan no longer
31 offers any benefits to the class of similarly situated individuals
32 that includes the individual; or (vii) the health insurer
33 terminated coverage under G.S. 58-68-45(c)(2).
- 34 d. Under the terms of the plan, the employee requests the
35 enrollment not later than 30 days after the date of the applicable
36 event described in sub-subdivision c. of this subdivision.
- 37 (2) For dependent beneficiaries. –
 - 38 a. In general. – If: (i) a group health insurance plan makes
39 coverage available with respect to a dependent of an individual,
40 (ii) the individual is a participant under the plan (or has met any
41 waiting period applicable to becoming a participant under the
42 plan and is eligible to be enrolled under the plan but for a
43 failure to enroll during a previous enrollment period), and (iii) a

person becomes the dependent of the individual through marriage, birth, or adoption or placement for adoption.

The plan shall provide for a dependent special enrollment period described in sub-subdivision b. of this subdivision during which the person (or, if not otherwise enrolled, the individual) may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

b. Dependent special enrollment period. – A dependent special enrollment period under this sub-subdivision shall be a period of not less than 30 days and shall begin on the later of: (i) the date dependent coverage is made available, or (ii) the date of the marriage, birth, or adoption or placement for adoption described in sub-subdivision a.(iii) of this subdivision.

c. No waiting period. – If an individual seeks to enroll a dependent during the first 30 days of the dependent's special enrollment period, the coverage of the dependent shall become effective: (i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received; (ii) in the case of a dependent's birth, as of the date of the birth; or (iii) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

(3) Treatment of special enrollees. –

a. If an individual requests enrollment while the individual is entitled to special enrollment under this subsection, the individual is a special enrollee, even if the request for enrollment coincides with a late enrollment opportunity under the plan. Therefore, the individual cannot be considered a late enrollee.

b. Special enrollees shall be offered all of the benefit packages available to similarly situated individuals who enroll when first eligible. For this purpose, any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package. In addition, a special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls in the same coverage when first eligible. The length of any preexisting condition exclusion that may be applied to a special enrollee cannot exceed the length of any preexisting condition exclusion that is applied to similarly situated individuals who enroll when first eligible."

SECTION 2.5. G.S. 58-68-30 is amended by adding the following new subsections to read:

1 "(h) General Notice of Preexisting Condition Exclusion. – A group health insurer
2 offering group health insurance coverage subject to a preexisting condition exclusion
3 shall provide a written general notice of preexisting condition exclusion to participants
4 under the plan; and shall not impose a preexisting condition exclusion with respect to a
5 participant or a dependent of the participant until the notice is provided.

6 A group health insurer shall provide the general notice of preexisting condition
7 exclusion as part of any written application materials distributed by the insurer for
8 enrollment. If the insurer does not distribute these materials, the notice shall be provided
9 by the earliest date following a request for enrollment that the insurer, acting in a
10 reasonable and prompt fashion, can provide the notice.

11 The general notice of preexisting condition exclusion shall notify participants of the
12 following:

13 (1) The existence and terms of any preexisting condition exclusion under
14 the plan. This description includes the length of the plan's look-back
15 period, which shall not exceed six months under subdivision (a)(1) of
16 this section; the maximum preexisting condition exclusion period
17 under the plan, which shall not exceed 12 months (18 months for late
18 enrollees) under subdivision (a)(2) of this section; and how the plan
19 will reduce the maximum preexisting condition exclusion period by
20 creditable coverage, as described in subsection (c) of this section.

21 (2) A description of the rights of individuals to demonstrate creditable
22 coverage, and any applicable waiting periods, through a certificate of
23 creditable coverage, as required by subsection (e) of this section, or
24 through other means as described in federal regulations. This shall
25 include a description of the right of the individual to request a
26 certificate from a prior insurer, if necessary, and a statement that the
27 current insurer will assist in obtaining a certificate from any prior plan
28 or insurer, if necessary.

29 (3) A person to contact, including an address or telephone number for
30 obtaining additional information or assistance about the preexisting
31 condition exclusion.

32 Nothing in this subsection affects a group health insurer's responsibility under this
33 section to fully disclose in the master group policy, the certificate or evidence of
34 coverage, and the member handbook the plan's preexisting condition limitation, the
35 rules relating to creditable coverage, including how an individual may provide proof of
36 creditable coverage, and the methods of counting and crediting coverage.

37 (i) Individual Notice of Period of Preexisting Condition Exclusion. – After an
38 individual has presented evidence of creditable coverage and the group health insurer
39 has made a determination of creditable coverage under subdivision (c)(5) of this section,
40 the group health insurer shall provide the individual a written notice of the length of
41 preexisting condition exclusion that remains after offsetting for prior creditable
42 coverage. In the notice, the insurer is not required to identify any medical conditions
43 specific to the individual that could be subject to the exclusion. A group health insurer is
44 not required to provide this notice if the plan does not impose any preexisting condition

1 exclusion on the individual or if the plan's preexisting condition exclusion is completely
2 offset by the individual's prior creditable coverage.

3 The individual notice must be provided by the earliest date following a
4 determination that the group health insurer, acting in a reasonable and prompt fashion,
5 can provide the notice.

6 A group health insurer shall disclose:

7 (1) Its determination of any preexisting condition exclusion period that
8 applies to the individual, including the last day on which the
9 preexisting condition exclusion applies.

10 (2) The basis for that determination, including the source and substance of
11 any information on which the plan or insurer relied.

12 (3) An explanation of the individual's right to submit additional evidence
13 of creditable coverage.

14 (4) A description of any applicable appeal procedures established by the
15 group health insurer.

16 (j) Determination Modification. – Nothing in this section prevents a plan or
17 insurer from modifying an initial determination of creditable coverage if it determines
18 that the individual did not have the claimed creditable coverage, provided that:

19 (1) A notice of the new determination, consistent with the requirements of
20 subsection (i) of this section, is provided to the individual; and

21 (2) Until the notice of the new determination is provided, the group health
22 insurer, for purposes of approving access to medical services (such as
23 a presurgery authorization), acts in a manner consistent with the initial
24 determination.

25 (k) Notice Form and Content. – Any notices required under this section shall be
26 in the form and content and be delivered as prescribed by, in accordance with, or as
27 specified in federal regulations, unless otherwise provided in this Chapter."

28 **SECTION 2.6.** Article 58 of Chapter 58 of the General Statutes is amended
29 by adding a new section to read:

30 **"§ 58-58-141. Portability of group life insurance.**

31 (a) Definition. – For purposes of this section, "portability" means the prerogative
32 to continue existing group life insurance coverage, or access alternate group life
33 insurance coverage, that may be provided by a group life insurance policy to an
34 individual insured after the individual's affiliation with the initial group terminates.

35 (b) Applicability. – This section applies to all certificates issued under group
36 policies that are used in this State. This section also applies to a certificate issued under
37 a policy issued and delivered to a trust or to an association outside of this State and
38 covering persons residing in this State.

39 (c) Prohibitions. – The use of health questions, underwriting, or eligibility
40 requirements that pertain to health status is prohibited when an individual insured elects
41 to access a portability option provided by a group life insurance policy."

42
43 **PART III. EXTERNAL REVIEW.**

44 **SECTION 3.1.** G.S. 58-50-82(b)(1) reads as rewritten:

"(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:

- (1) Notify the insurer that made the noncertification, noncertification appeal decision, or second-level grievance review decision which is the subject of the request that the request has been received and provide a copy of the request or verbally convey all of the information included in the request. The Commissioner shall also request any information from the insurer necessary to make the preliminary review set forth in G.S. 58-50-80(b)(2) and require the insurer to deliver the information not later than one business day after the request was made.

...."

SECTION 3.2. G.S. 58-50-82(c) reads as rewritten:

"(c) As soon as possible, but within the same business day of receiving notice under subdivision (b)(2) of this section that the request has been assigned to a review organization, the insurer or its designee utilization review organization shall provide or transmit all documents and information considered in making the noncertification appeal decision or the second-level grievance review decision to the assigned review organization electronically or by telephone or facsimile or any other available expeditious method. A copy of the same information shall be sent by the same means or other expeditious means to the covered person or the covered person's representative who made the request for expedited external review."

SECTION 3.3. G.S. 58-50-95 reads as rewritten:

"§ 58-50-95. Report by Commissioner.

The Commissioner shall report ~~semiannually~~ annually to the Joint Legislative Health Care Oversight Committee regarding the nature and appropriateness of reviews conducted under this Part. The report, which shall be provided to the public upon request, should include the number of reviews, underlying issues in dispute, character of the reviews, dollar amounts in question, whether the review was decided in favor of the covered person or the health benefit plan, the cost of review, and any other information relevant to the evaluation of the effectiveness of this Part."

PART IV. LONG-TERM CARE INSURANCE.

SECTION 4. G.S. 58-55-20(4) reads as rewritten:

- "(4) "Long-term care insurance" means any policy or certificate advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" ~~includes~~ group includes:

- a. Group and individual annuities and life insurance policies or riders that supplement or directly provide long-term care insurance.

b. A policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

c. Qualified long-term care insurance contracts.

d. Group and individual policies whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations prepaid health plans, health maintenance organizations, or any similar organization. "Long-term care insurance" does not include any policy that is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

With regard to life insurance, "long-term care insurance" does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement, and that provide the option of a lump-sum payment for those benefits and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care."

PART V. SMALL EMPLOYER GROUP HEALTH INSURANCE.

SECTION 5.1. G.S. 58-50-126(d) reads as rewritten:

"(d) Election. – The small employer carrier elections of the policies to be offered under this section shall apply uniformly to all small employers in this State for that small employer carrier. The election shall be effective for a period of not less than two years. An election under this section shall be made in accordance with G.S. 58-50-127."

SECTION 5.2. Article 50 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-50-127. Small employer carrier plan elections.

A small employer carrier shall submit, in a format prescribed by the Commissioner, an election pursuant to G.S. 58-50-125(d) pertaining to the offering of at least one basic and standard health care plan or the alternative health care plans as provided in G.S. 58-50-126. The election shall be effective for a period of not less than two years. The election shall be submitted with policy forms when they are submitted for approval, or if the policy forms have been previously approved, then no later than February 1 of the year in which the small employer carrier wishes the election to begin. If a small employer carrier does not make a new election, or if the new election is not approved if applicable, the existing election at the end of the two-year election period shall continue to apply for another two-year period."

PART VI. CREDIT INSURANCE.

SECTION 6.1. G.S. 58-57-5 is amended by adding a new subdivision after G.S. 58-57-5(5b) to read:

"(5b) "Critical period conversion ratio" means the ratio of the benefit value of the critical period divided by the benefit value of the full term."

SECTION 6.2. G.S. 58-57-35 is amended by adding a new subsection to read:

"(d) Premium rates for benefits provided during a critical period shall be adjusted by a critical period conversion ratio that reduces the rates giving recognition to the shorter benefit period provided."

PART VII. MISCELLANEOUS PROVISIONS.

SECTION 7.1. G.S. 58-3-35 reads as rewritten:

"§ 58-3-35. Stipulations as to jurisdiction and limitation of actions.

(a) No insurer, self-insurer, service corporation, HMO, ~~or MEWA~~ MEWA, continuing care provider, viatical settlement provider, or professional employer organization licensed under this Chapter shall make any condition or stipulation in its ~~insurance contracts or policies~~ concerning the court or jurisdiction in which any suit or action on the contract may be brought.

(b) No insurer, self-insurer, service corporation, HMO, ~~or MEWA~~ MEWA, continuing care provider, viatical settlement provider, or professional employer organization licensed under this Chapter shall limit the time within which any suit or action referred to in subsection (a) of this section may be commenced to less than the period prescribed by law.

(c) All conditions and stipulations forbidden by this section are void."

SECTION 7.2. G.S. 58-3-167(a)(1) reads as rewritten:

"(1) "Health benefit plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. "Health benefit plan" does not mean any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives. "Health benefit plan" does not mean any of the following kinds of insurance:

- a. Accident.
- b. Credit.
- c. Disability income.
- d. Long-term or nursing home care.
- e. Medicare supplement.
- f. Specified disease.

- g. ~~Dental or vision.~~
- h. ~~Coverage issued as a supplement to liability insurance.~~
- i. ~~Workers' compensation.~~
- j. ~~Medical payments under automobile or homeowners.~~
- k. ~~Hospital income or indemnity.~~
- l. ~~Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self insurance.~~
- m. ~~Short term limited duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.~~

plan consisting of one or more of any combination of benefits described in G.S. 58-68-25(b)."

SECTION 7.3. G.S. 58-10-35(c) reads as rewritten:

"(c) After no fewer than 24 months after the mailing of the initial notice of transfer required under G.S. 58-10-30, if positive consent to, or rejection of, the transfer and assumption has not been received or consent has not been deemed to have occurred under subsection (b) of this section, the transferring insurer shall send to the policyholder a second and final notice of transfer as specified in G.S. 58-10-30. If the policyholder does not accept or reject the transfer during the one-month period immediately after the date on which the transferring insurer mailed the second and final notice of transfer, the policyholder's consent and novation of the contract will occur. With respect to the home service business, or any other business not using premium notices, the 24-month and one-month periods shall be measured from the date of delivery of the notice of transfer under G.S. 58-10-30."

SECTION 7.4. G.S. 58-56-51(a) reads as rewritten:

"(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA in this State without a valid TPA license issued by the Commissioner. Licenses shall be renewed annually. Failure to submit a complete renewal application shall result in the expiration of the license of the TPA as a matter of law; provided, however, the Commissioner may grant the TPA an extension of time for good cause."

SECTION 7.5. G.S. 58-56-51(f) reads as rewritten:

"(f) A person is not required to be licensed as a TPA in this State if the person provides services exclusively to one or more bona fide employee benefit plans each of which is established by an employer, an employee organization, or both, and for which the insurance laws of this State are preempted pursuant to the Employee Retirement Income Security Act of 1974. Persons who are not required to be licensed shall register with the Commissioner annually, verifying their status as described in this subsection. Failure to submit an annual verification shall result in the expiration of the registration of the TPA as a matter of law; provided, however, the Commissioner may grant the TPA an extension of time for good cause."

SECTION 7.6. G.S. 58-58-135(1)c. is repealed.

SECTION 7.7. G.S. 58-58-205(12) reads as rewritten:

"(12) "Viatical settlement provider" or "provider" means a person, other than a viator, that enters into or effectuates a viatical settlement ~~contract.~~

contract on residents of this State or residents of another state from offices within this State. ~~Viatical settlement provider~~ "Viatical settlement provider" or "provider" does not include:

- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
- b. The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract;
- c. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- e. A financing entity;
- f. A special purpose entity;
- g. A related provider trust;
- h. A viatical settlement purchaser; or
- i. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider."

PART VIII. TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN TECHNICAL CORRECTIONS.

SECTION 8.1. G.S. 58-2-161(a)(1)m. reads as rewritten:

"m. The Teachers' and State Employees' Comprehensive Major Medical Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

SECTION 8.2. G.S. 58-3-171(c) reads as rewritten:

"(c) For purposes of this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health maintenance organization (HMO) subscriber contracts and other plans provided by managed-care organizations; plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA; the Teachers' and State Employees' Comprehensive Major Medical Plan; Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes; and medical payment coverages under homeowners and automobile insurance policies."

SECTION 8.3. G.S. 58-3-172(b) reads as rewritten:

"(b) For purposes of this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance organization (HMO) subscriber contracts and other plans provided by managed-care organizations; plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA; and the Teachers' and State Employees' Comprehensive Major Medical Plan, Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

SECTION 8.4. G.S. 58-3-175(a) reads as rewritten:

"(a) As used in this section, "health benefit plan" has the same meaning as in G.S. 58-50-110(11) and includes the Teachers' and State Employees' Comprehensive Major Medical Plan, Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

SECTION 8.5. G.S. 58-50-75(b) reads as rewritten:

"(b) This Part applies to all insurers that offer a health benefit plan and that provide or perform utilization review pursuant to G.S. 58-50-61, the Teachers' and State Employees' Comprehensive Major Medical Plan, any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes, and the Health Insurance Program for Children. With respect to second-level grievance review decisions, this Part applies only to second-level grievance review decisions involving noncertification decisions."

SECTION 8.6. G.S. 58-51-115(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

(1) "Health benefit plan" means any accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; the Teachers' and State Employees' Comprehensive Major Medical Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. "Health benefit plan" does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).

(2) "Health insurer" means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

PART IX. EFFECT OF HEADINGS.

1 **SECTION 9.** The headings to the parts of this act are a convenience to the
2 reader and are for reference only. The headings do not expand, limit, or define the text
3 of this act.
4

5 **PART X. EFFECTIVE DATES.**

6 **SECTION 10.** Part I of this act becomes effective January 1, 2008, and
7 applies to violations occurring on or after that date. Sections 7.4 and 7.5 apply to
8 renewal applications submitted on or after October 1, 2007. Section 10 and Parts II, III,
9 V, and VIII are effective when the bill becomes law. The remainder of the act becomes
10 effective October 1, 2007, and applies to policies issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 731*

Committee Substitute Favorable 5/2/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H731-CSR-50 [v.3]

7/9/2007 4:42:17 PM

Short Title: Revise Life and Health Insurance Laws.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS PURCHASING ANNUITY PRODUCTS;
ADDRESS PORTABILITY IN ACCIDENT AND HEALTH AND LIFE
INSURANCE; MAKE MINOR CHANGES IN THE LAWS ON MANAGED
CARE EXTERNAL REVIEWS; CLARIFY DEFINITIONS IN LONG-TERM
CARE INSURANCE; ADDRESS SMALL EMPLOYER CARRIER PLAN
ELECTIONS; DEFINE "CRITICAL PERIOD CONVERSION RATIO" FOR
CREDIT INSURANCE; MAKE MISCELLANEOUS AMENDMENTS TO
OTHER PROVISIONS RELATED TO LIFE AND HEALTH INSURANCE; AND
MAKE TECHNICAL CORRECTIONS IN INSURANCE CODE REFERENCES
TO THE TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

PART I. SUITABILITY IN ANNUITY TRANSACTIONS.

SECTION 1.1. Article 60 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 4. Suitability in Annuity Transactions.

"§ 58-60-150. Title and reference.

This Part may be cited as the "Suitability in Annuity Transactions Act".

"§ 58-60-155. Purpose; scope.

(a) The purpose of this Part is to set forth standards and procedures for
recommendations to consumers that result in a transaction involving annuity products so
that the insurance needs and financial objectives of consumers at the time of the
transaction are appropriately addressed.

(b) This Part shall apply to any recommendation to purchase or exchange an
annuity made to a consumer by an insurance producer, or an insurer where no producer
is involved, that results in the purchase or exchange recommended.

"§ 58-60-160. Exemptions.

Unless otherwise specifically included, this Part does not apply to recommendations involving any of the following:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part.
- (2) Contracts used to fund any of the following:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).
 - b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer.
 - c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.
 - f. Formal prepaid funeral contracts.

"§ 58-60-165. Definitions.

As used in this Part:

- (1) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
- (2) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).
- (3) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

"§ 58-60-170. Duties of insurers and insurance producers.

(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Before recommending the purchase or exchange of an annuity resulting from a recommendation, the insurance producer, or the insurer where no producer is involved, shall make reasonable efforts to obtain information about the particular consumer's circumstances, including but not limited to, all of the following:

- (1) The consumer's financial status.
- (2) The consumer's tax status.
- (3) The consumer's investment objectives.
- (4) Any other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(c) Except as provided under subdivision (1) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under subsection (a) of this section related to any recommendation if a consumer does any of the following:

- (1) Refuses to provide relevant information requested by the insurer or insurance producer. An insurer or insurance producer's recommendation subject to this subdivision shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.
- (2) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer.
- (3) Fails to provide complete or accurate information requested by the insurer or insurance producer.

(d) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this Part is established and maintained by complying with subsections (e), (f), and (g) of this section, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures.
- (2) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this Part.

(e) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this Part, or shall establish and maintain such a system, including:

- (1) Maintaining written procedures.
- (2) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this Part.

(f) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by subsection (d) of this section with respect to insurance producers under contract with, or employed by, the third party. An insurer shall make reasonable inquiry to assure that the third party contracting under this subsection is performing the functions required under subsection (d) of this section and shall take any action that is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

- (1) The insurer annually obtains a certification from a third-party senior manager who has responsibility for the delegated functions that the

1 manager has a reasonable basis to represent, and does represent, that
2 the third party is performing the required functions. No person may
3 provide a certification under this subdivision unless (i) the person is a
4 senior manager with responsibility for the delegated functions; and (ii)
5 the person has a reasonable basis for making the certification.

6 (2) The insurer, based on reasonable selection criteria, periodically selects
7 third parties contracting under this subsection for a review to
8 determine whether the third parties are performing the required
9 functions. The insurer shall perform those procedures to conduct the
10 review that are reasonable under the circumstances.

11 An insurer that contracts with a third party, and that complies with the requirements
12 to supervise the third party pursuant to this subsection, shall have fulfilled its
13 responsibilities under subsection (d) of this section.

14 A general agent or independent agency contracting with an insurer shall promptly,
15 when requested by the insurer pursuant to this subsection, give a certification as
16 described in this subsection or give a clear statement that it is unable to meet the
17 certification criteria.

18 (g) An insurer, general agent, or independent agency is not required by
19 subsections (d) or (e) of this section to:

20 (1) Review, or provide for review of, all insurance producer solicited
21 transactions; or

22 (2) Include in its system of supervision an insurance producer's
23 recommendations to consumers of products other than the annuities
24 offered by the insurer, general agent or independent agency.

25 (h) Compliance with the National Association of Securities Dealers Conduct
26 Rules pertaining to suitability shall satisfy the requirements under this section for the
27 recommendation of variable annuities. However, nothing in this subsection limits the
28 Commissioner's ability to enforce the provisions of this Part.

29 **"§ 58-60-175. Mitigation of responsibility.**

30 (a) The Commissioner may order:

31 (1) An insurer to take reasonably appropriate corrective action for any
32 consumer harmed by the insurer's, or by its insurance producer's,
33 violation of this Part.

34 (2) An insurance producer to take reasonably appropriate corrective action
35 for any consumer harmed by the insurance producer's violation of this
36 Part.

37 (3) A general agency or independent agency that employs or contracts
38 with an insurance producer to sell, or solicit the sale, of annuities to
39 consumers, to take reasonably appropriate corrective action for any
40 consumer harmed by the insurance producer's violation of this Part.

41 (b) Any applicable penalty under G.S. 58-2-70 for a violation of subsection (a) or
42 (b) of G.S. 58-60-170 may be reduced or eliminated if corrective action for the
43 consumer was taken promptly after a violation was discovered.

(c) A violation of this Part is an unfair method of competition and unfair and deceptive act or practice in the business of insurance in violation of G.S. 58-63-10.

"§ 58-60-180. Record keeping.

(a) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this Part may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document."

SECTION 1.2. Article 58 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"§ 58-58-146. Application for annuities required.

Each individual annuity contract shall be issued only upon application of the applicant. Any application or enrollment form is subject to G.S. 58-3-150, and if taken by an agent, shall include the certificate of the agent that the agent has truly and accurately recorded on the application or enrollment form the information provided by the applicant. Every annuity contract subject to this section shall contain as part of the contract the original or reproduction of the application required by this section.

"§ 58-58-147. Surrender fees on death benefits.

No authorized insurer shall deliver or issue for delivery in this State any deferred annuity contract that contains a provision that reduces the death benefit of the contract by a surrender fee when death occurs during the surrender period."

PART II. PORTABILITY IN ACCIDENT AND HEALTH AND LIFE INSURANCE.

SECTION 2.1. G.S. 58-51-15(a)(2)b. reads as rewritten:

"(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

...

- b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy ____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Except for the excepted benefits described in G.S. 58-68-25(b), credit~~ Credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with ~~G.S. 58-68-30.~~

G.S. 58-51-17. The excepted benefits described in G.S. 58-68-25(b) are not subject to this requirement for giving credit."

SECTION 2.2. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-51-17. Portability for accident and health insurance.

(a) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.**
- b. Group or individual health insurance coverage.**
- c. Part A or part B of title XVIII of the Social Security Act.**
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.**
- e. Chapter 55 of title 10, United States Code.**
- f. A medical care program of the Indian Health Service or of a tribal organization.**
- g. A State health benefits risk pool.**
- h. A health plan offered under chapter 89 of title 5, United States Code.**
- i. A public health plan (as defined in federal regulations).**
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).**
- k. Title XXI of the Social Security Act (State Children's Health Insurance Program).**

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits as described in G.S. 58-68-25(b). However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section.

(2) Not counting periods before significant breaks in coverage. –

- a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under an individual health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.**
- b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (b)(3) of this section, any period that an individual is in a waiting period, as defined in G.S. 58-68-30(b)(4)c., for any coverage under an individual health insurance plan shall not**

- 1 be taken into account in determining the continuous period
2 under sub-subdivision a. of this subdivision.
- 3 c. For an individual who elects COBRA continuation coverage
4 during the second election period provided under the Trade Act
5 of 2002, the days between the date the individual lost group
6 health plan coverage and the first day of the second COBRA
7 election period shall not be considered when determining
8 whether a significant break in coverage has occurred.
- 9 (3) Method of crediting coverage. – An individual health insurer shall
10 count a period of creditable coverage without regard to the specific
11 benefits covered during the period.
- 12 (4) Establishment of period. – Periods of creditable coverage for an
13 individual shall be established through presentation of certifications
14 described in subsection (c) of this section or in another manner that is
15 specified in regulations.
- 16 (5) Determination of creditable coverage. –
- 17 a. Determination within reasonable time. – If an individual health
18 insurer receives creditable coverage information under
19 subsection (c) of this section, the insurer shall, within a
20 reasonable time following receipt of the information, make a
21 determination regarding the amount of the individual's
22 creditable coverage and the length of any exclusion that
23 remains. Whether this determination is made within a
24 reasonable time depends on the relevant facts and
25 circumstances. Relevant facts and circumstances include
26 whether a plan's application of a preexisting condition exclusion
27 would prevent an individual from having access to urgent
28 medical care.
- 29 b. No time limit on presenting evidence of creditable coverage. –
30 An individual health insurer shall not impose any limit on the
31 amount of time that an individual has to present a certificate or
32 other evidence of creditable coverage.
- 33 (b) Exceptions. –
- 34 (1) Exclusion not applicable to certain newborns. – Subject to subdivision
35 (3) of this subsection, an individual health insurer shall not impose any
36 preexisting condition exclusion in the case of an individual who, as of
37 the last day of the 30-day period beginning with the individual's date
38 of birth, is covered under creditable coverage.
- 39 (2) Exclusion not applicable to certain adopted children. – Subject to
40 subdivision (3) of this subsection, a group health insurer shall not
41 impose any preexisting condition exclusion in the case of a child who
42 is adopted or placed for adoption before attaining 18 years of age and
43 who, as of the last day of the 30-day period beginning on the date of
44 the adoption or placement for adoption, is covered under creditable

coverage. The previous sentence does not apply to coverage before the date of the adoption or placement for adoption.

(3) Loss if break in coverage. – Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(c) Certifications and Disclosure of Coverage. –

(1) In general. – An individual health insurer shall provide the certification described in this subdivision (i) at the time an individual ceases to be covered under the plan, and (ii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) of this subdivision, whichever is later.

(2) Certification. – The certification described in this subdivision is a written certification of (i) the period of creditable coverage of the individual under the plan and (ii) any waiting period and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan."

SECTION 2.3. G.S. 58-68-30(c) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
- b. Group or individual health insurance coverage.
- c. Part A or part B of title XVIII of the Social Security Act.
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- e. Chapter 55 of title 10, United States Code.
- f. A medical care program of the Indian Health Service or of a tribal organization.
- g. A State health benefits risk pool.
- h. A health plan offered under chapter 89 of title 5, United States Code.
- i. A public health plan (as defined in federal regulations).
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
- k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section and G.S. 58-51-15(a)(2)b.

- 1 (2) Not counting periods before significant breaks in coverage. –
2 a. In general. – A period of creditable coverage shall not be
3 counted, with respect to enrollment of an individual under a
4 group health insurance plan, if, after the period and before the
5 enrollment date, there was a 63-day period during all of which
6 the individual was not covered under any creditable coverage.
7 b. Waiting period not treated as a break in coverage. – For the
8 purposes of sub-subdivision a. of this subdivision and
9 subdivision (d)(4) of this subsection, any period that an
10 individual is in a waiting period for any coverage under a group
11 health insurance plan or is in an affiliation period shall not be
12 taken into account in determining the continuous period under
13 sub-subdivision a. of this subdivision.
14 c. Time spent on short term limited duration health insurance not
15 treated as a break in coverage. – For the purposes of
16 sub-subdivision a. of this subdivision, any period that an
17 individual is enrolled on a short term limited duration health
18 insurance policy shall not be taken into account in determining
19 the continuous period under sub-subdivision. a. of this
20 subdivision so long as the period of time spent on the short term
21 limited duration health insurance policy or policies does not
22 exceed 12 months.
23 d. For an individual who elects COBRA continuation coverage
24 during the second election period provided under the Trade Act
25 of 2002; the days between the date the individual lost group
26 health plan coverage and the first day of the second COBRA
27 election period shall not be considered when determining
28 whether a significant break in coverage has occurred.
- 29 (3) Method of crediting coverage. –
30 a. Standard method. – Except as otherwise provided under
31 sub-subdivision b. of this subdivision for the purposes of
32 applying subdivision (a)(3) of this subsection, a group health
33 insurer shall count a period of creditable coverage without
34 regard to the specific benefits covered during the period.
35 b. Election of alternative method. – A group health insurer may
36 elect to apply subdivision (a)(3) of this subsection based on
37 coverage of benefits within each of several classes or categories
38 of benefits specified in federal regulations rather than as
39 provided under sub-subdivision a. of this subdivision. This
40 election shall be made on a uniform basis for all participants
41 and beneficiaries. Under this election a group health insurer
42 shall count a period of creditable coverage with respect to any
43 class or category of benefits if any level of benefits is covered
44 within the class or category.

- 1 c. Health insurer notice. – In the case of an election under
2 sub-subdivision b. of this subdivision with respect to health
3 insurance coverage in the small or large group market, the
4 health insurer: (i) shall prominently state in any disclosure
5 statements concerning the coverage, and to each employer at
6 the time of the offer or sale of the coverage, that the health
7 insurer has made the election, and (ii) shall include in the
8 statements a description of the effect of the election.
- 9 (4) Establishment of period. – Periods of creditable coverage for an
10 individual shall be established through presentation of certifications
11 described in subsection (e) of this section or in another manner that is
12 specified in federal regulations.
- 13 (5) Determination of creditable coverage. –
- 14 a. Determination within reasonable time. – If a group health
15 insurer receives creditable coverage information under
16 subsection (e) of this section, the group health insurer shall,
17 within a reasonable time following receipt of the information,
18 make a determination regarding the amount of the individual's
19 creditable coverage and the length of any exclusion that
20 remains. Whether this determination is made within a
21 reasonable time depends on the relevant facts and
22 circumstances. Relevant facts and circumstances include
23 whether a plan's application of a preexisting condition exclusion
24 would prevent an individual from having access to urgent
25 medical care.
- 26 b. No time limit on presenting evidence of creditable coverage. –
27 A group health insurer shall not impose any limit on the amount
28 of time that an individual has to present a certificate or other
29 evidence of creditable coverage."

30 **SECTION 2.4.** G.S. 58-68-30(f) reads as rewritten:

31 "(f) Special Enrollment Periods. –

- 32 (1) Individuals losing other coverage. – A group health insurer shall
33 permit an employee who is eligible, but not enrolled, for coverage
34 under the terms of the plan (or a dependent of the employee if the
35 dependent is eligible, but not enrolled, for coverage under the terms) to
36 enroll for coverage under the terms of the plan if each of the following
37 conditions is met:
- 38 a. The employee or dependent was covered under an ERISA
39 group health plan or had health insurance coverage at the time
40 coverage was previously offered to the employee or dependent.
- 41 b. The employee stated in writing at the time that coverage under
42 the group health plan or health insurance coverage was the
43 reason for declining enrollment, but only if the health insurer
44 required the statement at the time and provided the employee

1 with notice of the requirement and the consequences of the
2 requirement at the time.

- 3 c. With respect to the employee's or dependent's coverage
4 described in sub-subdivision a. of this subsection: (i) the
5 coverage was under a COBRA continuation provision and the
6 coverage under the provision was exhausted; (ii) the coverage
7 was not under that provision and either the coverage was
8 terminated because of loss of eligibility for the coverage,
9 including legal separation, divorce, cessation of dependent
10 status (such as attaining the maximum age to be eligible as a
11 dependent child under the plan), death of an employee,
12 termination of employment, reduction in the number of hours of
13 employment, and any loss of eligibility for coverage after a
14 period that is measured by reference to any of the foregoing;
15 (iii) employer contributions toward the coverage were
16 terminated; (iv) in the case of coverage offered through an
17 arrangement that does not provide benefits to individuals who
18 no longer reside, live, or work in a service area, there has been
19 loss of coverage because an individual no longer resides, lives,
20 or works in the service area (whether or not within the choice of
21 the individual), and no other benefit package is available to the
22 individual; (v) an individual incurs a claim that would meet or
23 exceed a lifetime limit on all benefits; or (vi) a plan no longer
24 offers any benefits to the class of similarly situated individuals
25 that includes the individual; or (vii) the health insurer
26 terminated coverage under G.S. 58-68-45(c)(2).

- 27 d. Under the terms of the plan, the employee requests the
28 enrollment not later than 30 days after the date of the applicable
29 event described in sub-subdivision c. of this subdivision.

30 (2) For dependent beneficiaries. –

- 31 a. In general. – If: (i) a group health insurance plan makes
32 coverage available with respect to a dependent of an individual,
33 (ii) the individual is a participant under the plan (or has met any
34 waiting period applicable to becoming a participant under the
35 plan and is eligible to be enrolled under the plan but for a
36 failure to enroll during a previous enrollment period), and (iii) a
37 person becomes the dependent of the individual through
38 marriage, birth, or adoption or placement for adoption.

39 The plan shall provide for a dependent special enrollment period
40 described in sub-subdivision b. of this subdivision during which the
41 person (or, if not otherwise enrolled, the individual) may be enrolled
42 under the plan as a dependent of the individual, and in the case of the
43 birth or adoption of a child, the spouse of the individual may be

enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

b. Dependent special enrollment period. – A dependent special enrollment period under this sub-subdivision shall be a period of not less than 30 days and shall begin on the later of: (i) the date dependent coverage is made available, or (ii) the date of the marriage, birth, or adoption or placement for adoption described in sub-subdivision a.(iii) of this subdivision.

c. No waiting period. – If an individual seeks to enroll a dependent during the first 30 days of the dependent's special enrollment period, the coverage of the dependent shall become effective: (i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received; (ii) in the case of a dependent's birth, as of the date of the birth; or (iii) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

(3) Treatment of special enrollees. –

a. If an individual requests enrollment while the individual is entitled to special enrollment under this subsection, the individual is a special enrollee, even if the request for enrollment coincides with a late enrollment opportunity under the plan. Therefore, the individual cannot be considered a late enrollee.

b. Special enrollees shall be offered all of the benefit packages available to similarly situated individuals who enroll when first eligible. For this purpose, any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package. In addition, a special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls in the same coverage when first eligible. The length of any preexisting condition exclusion that may be applied to a special enrollee cannot exceed the length of any preexisting condition exclusion that is applied to similarly situated individuals who enroll when first eligible."

SECTION 2.5. G.S. 58-68-30 is amended by adding the following new subsections to read:

"(h) General Notice of Preexisting Condition Exclusion. – A group health insurer offering group health insurance coverage subject to a preexisting condition exclusion shall provide a written general notice of preexisting condition exclusion to participants under the plan; and shall not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant until the notice is provided.

A group health insurer shall provide the general notice of preexisting condition exclusion as part of any written application materials distributed by the insurer for

1 enrollment. If the insurer does not distribute these materials, the notice shall be provided
2 by the earliest date following a request for enrollment that the insurer, acting in a
3 reasonable and prompt fashion, can provide the notice.

4 The general notice of preexisting condition exclusion shall notify participants of the
5 following:

- 6 (1) The existence and terms of any preexisting condition exclusion under
7 the plan. This description includes the length of the plan's look-back
8 period, which shall not exceed six months under subdivision (a)(1) of
9 this section; the maximum preexisting condition exclusion period
10 under the plan, which shall not exceed 12 months (18 months for late
11 enrollees) under subdivision (a)(2) of this section; and how the plan
12 will reduce the maximum preexisting condition exclusion period by
13 creditable coverage, as described in subsection (c) of this section.
- 14 (2) A description of the rights of individuals to demonstrate creditable
15 coverage, and any applicable waiting periods, through a certificate of
16 creditable coverage, as required by subsection (e) of this section, or
17 through other means as described in federal regulations. This shall
18 include a description of the right of the individual to request a
19 certificate from a prior insurer, if necessary, and a statement that the
20 current insurer will assist in obtaining a certificate from any prior plan
21 or insurer, if necessary.
- 22 (3) A person to contact, including an address or telephone number for
23 obtaining additional information or assistance about the preexisting
24 condition exclusion.

25 Nothing in this subsection affects a group health insurer's responsibility under this
26 section to fully disclose in the master group policy, the certificate or evidence of
27 coverage, and the member handbook the plan's preexisting condition limitation, the
28 rules relating to creditable coverage, including how an individual may provide proof of
29 creditable coverage, and the methods of counting and crediting coverage.

30 (i) Individual Notice of Period of Preexisting Condition Exclusion. – After an
31 individual has presented evidence of creditable coverage and the group health insurer
32 has made a determination of creditable coverage under subdivision (c)(5) of this section,
33 the group health insurer shall provide the individual a written notice of the length of
34 preexisting condition exclusion that remains after offsetting for prior creditable
35 coverage. In the notice, the insurer is not required to identify any medical conditions
36 specific to the individual that could be subject to the exclusion. A group health insurer is
37 not required to provide this notice if the plan does not impose any preexisting condition
38 exclusion on the individual or if the plan's preexisting condition exclusion is completely
39 offset by the individual's prior creditable coverage.

40 The individual notice must be provided by the earliest date following a
41 determination that the group health insurer, acting in a reasonable and prompt fashion,
42 can provide the notice.

43 A group health insurer shall disclose:

- (1) Its determination of any preexisting condition exclusion period that applies to the individual, including the last day on which the preexisting condition exclusion applies.
- (2) The basis for that determination, including the source and substance of any information on which the plan or insurer relied.
- (3) An explanation of the individual's right to submit additional evidence of creditable coverage.
- (4) A description of any applicable appeal procedures established by the group health insurer.
- (j) Determination Modification. – Nothing in this section prevents a plan or insurer from modifying an initial determination of creditable coverage if it determines that the individual did not have the claimed creditable coverage, provided that:
- (1) A notice of the new determination, consistent with the requirements of subsection (i) of this section, is provided to the individual; and
- (2) Until the notice of the new determination is provided, the group health insurer, for purposes of approving access to medical services (such as a presurgery authorization), acts in a manner consistent with the initial determination.
- (k) Notice Form and Content. – Any notices required under this section shall be in the form and content and be delivered as prescribed by, in accordance with, or as specified in federal regulations, unless otherwise provided in this Chapter."

SECTION 2.6. Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-58-141. Portability of group life insurance.

(a) Definition. – For purposes of this section, "portability" means the prerogative to continue existing group life insurance coverage, or access alternate group life insurance coverage, that may be provided by a group life insurance policy to an individual insured after the individual's affiliation with the initial group terminates.

(b) Applicability. – This section applies to all certificates issued under group policies that are used in this State. This section also applies to a certificate issued under a policy issued and delivered to a trust or to an association outside of this State and covering persons residing in this State.

(c) Prohibitions. – The use of health questions, underwriting, or eligibility requirements that pertain to health status is prohibited when an individual insured elects to access a portability option provided by a group life insurance policy."

PART III. EXTERNAL REVIEW.

SECTION 3.1. G.S. 58-50-82(b)(1) reads as rewritten:

"(b) Within three business days of receiving a request for an expedited external review, the Commissioner shall complete all of the following:

- (1) Notify the insurer that made the noncertification, noncertification appeal decision, or second-level grievance review decision which is the subject of the request that the request has been received and provide a copy of the request or verbally convey all of the information

1 included in the request. The Commissioner shall also request any
2 information from the insurer necessary to make the preliminary review
3 set forth in G.S. 58-50-80(b)(2) and require the insurer to deliver the
4 information not later than one business day after the request was made.

5"

6 **SECTION 3.2.** G.S. 58-50-82(c) reads as rewritten:

7 "(c) As soon as possible, but within the same business day of receiving notice
8 under subdivision (b)(2) of this section that the request has been assigned to a review
9 organization, the insurer or its designee utilization review organization shall provide or
10 transmit all documents and information considered in making the noncertification
11 appeal decision or the second-level grievance review decision to the assigned review
12 organization electronically or by telephone or facsimile or any other available
13 expeditious method. A copy of the same information shall be sent by the same means or
14 other expeditious means to the covered person or the covered person's representative
15 who made the request for expedited external review."

16 **SECTION 3.3.** G.S. 58-50-95 reads as rewritten:

17 **"§ 58-50-95. Report by Commissioner.**

18 The Commissioner shall report ~~semiannually~~ annually to the Joint Legislative
19 Health Care Oversight Committee regarding the nature and appropriateness of reviews
20 conducted under this Part. The report, which shall be provided to the public upon
21 request, should include the number of reviews, underlying issues in dispute, character of
22 the reviews, dollar amounts in question, whether the review was decided in favor of the
23 covered person or the health benefit plan, the cost of review, and any other information
24 relevant to the evaluation of the effectiveness of this Part."

25 26 **PART IV. LONG-TERM CARE INSURANCE.**

27 **SECTION 4.** G.S. 58-55-20(4) reads as rewritten:

28 "(4) "Long-term care insurance" means any policy or certificate advertised,
29 marketed, offered, or designed to provide coverage for not less than 12
30 consecutive months for each covered person on an expense incurred,
31 indemnity, prepaid, or other basis, for one or more necessary or
32 medically necessary diagnostic, preventive, therapeutic, rehabilitative,
33 maintenance, or personal care services, provided in a setting other than
34 an acute care unit of a hospital. "Long-term care insurance" ~~includes~~
35 group includes:

- 36 a. Group and individual annuities and life insurance policies or
37 riders that supplement or directly provide long-term care
38 insurance.
39 b. A policy or rider that provides for payment of benefits based
40 upon cognitive impairment or the loss of functional capacity.
41 c. Qualified long-term care insurance contracts.
42 d. Group and individual policies whether issued by insurers,
43 fraternal benefit societies, nonprofit health, hospital, and
44 medical service corporations prepaid health plans, health

1 maintenance organizations, or any similar organization.
2 "Long-term care insurance" does not include any policy that is
3 offered primarily to provide basic Medicare supplement
4 coverage, basic hospital expense coverage, basic
5 medical-surgical expense coverage, hospital confinement
6 indemnity coverage, major medical expense coverage, disability
7 income protection coverage, accident only coverage, specified
8 disease or specified accident coverage, or limited benefit health
9 coverage.

10 With regard to life insurance, "long-term care insurance" does not
11 include life insurance policies that accelerate the death benefit
12 specifically for one or more of the qualifying events of terminal
13 illness, medical conditions requiring extraordinary medical
14 intervention or permanent institutional confinement, and that provide
15 the option of a lump-sum payment for those benefits and where neither
16 the benefits nor the eligibility for the benefits is conditioned upon the
17 receipt of long-term care."
18

19 **PART V. SMALL EMPLOYER GROUP HEALTH INSURANCE.**

20 **SECTION 5.1.** G.S. 58-50-126(d) reads as rewritten:

21 "(d) Election. – The small employer carrier elections of the policies to be offered
22 under this section shall apply uniformly to all small employers in this State for that
23 small employer carrier. The election shall be effective for a period of not less than two
24 years. An election under this section shall be made in accordance with G.S. 58-50-127."

25 **SECTION 5.2.** Article 50 of Chapter 58 of the General Statutes is amended
26 by adding a new section to read:

27 **"§ 58-50-127. Small employer carrier plan elections.**

28 A small employer carrier shall submit, in a format prescribed by the Commissioner,
29 an election pursuant to G.S. 58-50-125(d) pertaining to the offering of at least one basic
30 and standard health care plan or the alternative health care plans as provided in
31 G.S. 58-50-126. The election shall be effective for a period of not less than two years.
32 The election shall be submitted with policy forms when they are submitted for approval,
33 or if the policy forms have been previously approved, then no later than February 1 of
34 the year in which the small employer carrier wishes the election to begin. If a small
35 employer carrier does not make a new election, or if the new election is not approved if
36 applicable, the existing election at the end of the two-year election period shall continue
37 to apply for another two-year period."
38

39 **PART VI. CREDIT INSURANCE.**

40 **SECTION 6.1.** G.S. 58-57-5 is amended by adding a new subdivision after
41 G.S. 58-57-5(5b) to read:

42 "(5b) "Critical period conversion ratio" means the ratio of the benefit value
43 of the critical period divided by the benefit value of the full term."

1 **SECTION 6.2.** G.S. 58-57-35 is amended by adding a new subsection to
2 read:

3 "(d) Premium rates for benefits provided during a critical period shall be adjusted
4 by a critical period conversion ratio that reduces the rates giving recognition to the
5 shorter benefit period provided."

6
7 **PART VII. MISCELLANEOUS PROVISIONS.**

8 **SECTION 7.1.** G.S. 58-3-35 reads as rewritten:

9 **"§ 58-3-35. Stipulations as to jurisdiction and limitation of actions.**

10 (a) No insurer, self-insurer, service corporation, HMO, ~~or MEWA~~ MEWA,
11 continuing care provider, viatical settlement provider, or professional employer
12 organization licensed under this Chapter shall make any condition or stipulation in its
13 ~~insurance contracts or policies~~ concerning the court or jurisdiction in which any suit or
14 action on the contract may be brought.

15 (b) No insurer, self-insurer, service corporation, HMO, ~~or MEWA~~ MEWA,
16 continuing care provider, viatical settlement provider, or professional employer
17 organization licensed under this Chapter shall limit the time within which any suit or
18 action referred to in subsection (a) of this section may be commenced to less than the
19 period prescribed by law.

20 (c) All conditions and stipulations forbidden by this section are void."

21 **SECTION 7.2.** G.S. 58-3-167(a)(1) reads as rewritten:

22 "(1) "Health benefit plan" means an accident and health insurance policy or
23 certificate; a nonprofit hospital or medical service corporation
24 contract; a health maintenance organization subscriber contract; a plan
25 provided by a multiple employer welfare arrangement; or a plan
26 provided by another benefit arrangement, to the extent permitted by
27 the Employee Retirement Income Security Act of 1974, as amended,
28 or by any waiver of or other exception to that act provided under
29 federal law or regulation. "Health benefit plan" does not mean any
30 plan implemented or administered by the North Carolina or United
31 States Department of Health and Human Services, or any successor
32 agency, or its representatives. "Health benefit plan" does not mean any
33 ~~of the following kinds of insurance:~~

- 34 a. ~~Accident.~~
35 b. ~~Credit.~~
36 c. ~~Disability income.~~
37 d. ~~Long-term or nursing home care.~~
38 e. ~~Medicare supplement.~~
39 f. ~~Specified disease.~~
40 g. ~~Dental or vision.~~
41 h. ~~Coverage issued as a supplement to liability insurance.~~
42 i. ~~Workers' compensation.~~
43 j. ~~Medical payments under automobile or homeowners.~~
44 k. ~~Hospital income or indemnity.~~

1 ~~l. Insurance under which benefits are payable with or without~~
2 ~~regard to fault and that is statutorily required to be contained in~~
3 ~~any liability policy or equivalent self insurance.~~

4 ~~m. Short term limited duration health insurance policies as defined~~
5 ~~in Part 144 of Title 45 of the Code of Federal Regulations.~~

6 plan consisting of one or more of any combination of benefits described in
7 G.S. 58-68-25(b)."

8 **SECTION 7.3.** G.S. 58-10-35(c) reads as rewritten:

9 "(c) After no fewer than 24 months after the mailing of the initial notice of
10 transfer required under G.S. 58-10-30, if positive consent to, or rejection of, the transfer
11 and assumption has not been received or consent has not been deemed to have occurred
12 under subsection (b) of this section, the transferring insurer shall send to the
13 policyholder a second and final notice of transfer as specified in G.S. 58-10-30. If the
14 policyholder does not accept or reject the transfer during the one-month period
15 immediately after the date on which the transferring insurer mailed the second and final
16 notice of transfer, the policyholder's consent and novation of the contract will occur.
17 With respect to the home service business, or any other business not using premium
18 notices, the 24-month and one-month periods shall be measured from the date of
19 delivery of the notice of transfer under G.S. 58-10-30."

20 **SECTION 7.4.** G.S. 58-56-51(a) reads as rewritten:

21 "(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA
22 in this State without a valid TPA license issued by the Commissioner. Licenses shall be
23 renewed annually. Failure to submit a complete renewal application shall result in the
24 expiration of the license of the TPA as a matter of law; provided, however, the
25 Commissioner may grant the TPA an extension of time for good cause."

26 **SECTION 7.5.** G.S. 58-56-51(f) reads as rewritten:

27 "(f) A person is not required to be licensed as a TPA in this State if the person
28 provides services exclusively to one or more bona fide employee benefit plans each of
29 which is established by an employer, an employee organization, or both, and for which
30 the insurance laws of this State are preempted pursuant to the Employee Retirement
31 Income Security Act of 1974. Persons who are not required to be licensed shall register
32 with the Commissioner annually, verifying their status as described in this subsection.
33 Failure to submit an annual verification shall result in the expiration of the registration
34 of the TPA as a matter of law; provided, however, the Commissioner may grant the
35 TPA an extension of time for good cause."

36 **SECTION 7.6.** G.S. 58-58-135(1)c. is repealed.

37 **SECTION 7.7.** G.S. 58-58-205(12) reads as rewritten:

38 "(12) "Viatical settlement provider" or "provider" means a person, other than
39 a viator, that enters into or effectuates a viatical settlement ~~contract.~~
40 contract on residents of this State or residents of another state from
41 offices within this State. Viatical settlement provider— "Viatical
42 settlement provider" or "provider" does not include:

- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
- b. The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract;
- c. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- e. A financing entity;
- f. A special purpose entity;
- g. A related provider trust;
- h. A viatical settlement purchaser; or
- i. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider."

PART VIII. TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN TECHNICAL CORRECTIONS.

SECTION 8.1. G.S. 58-2-161(a)(1)m. reads as rewritten:

"m. The Teachers' and State Employees' Comprehensive Major Medical Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

SECTION 8.2. G.S. 58-3-171(c) reads as rewritten:

"(c) For purposes of this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health maintenance organization (HMO) subscriber contracts and other plans provided by managed-care organizations; plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA; the Teachers' and State Employees' Comprehensive Major Medical ~~Plan~~; Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes; and medical payment coverages under homeowners and automobile insurance policies."

SECTION 8.3. G.S. 58-3-172(b) reads as rewritten:

"(b) For purposes of this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance organization (HMO) subscriber contracts and other plans provided by

1 managed-care organizations; plans provided by a MEWA or plans provided by other
2 benefit arrangements, to the extent permitted by ERISA; and the Teachers' and State
3 Employees' Comprehensive Major Medical Plan. Plan and any optional plans or
4 programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

5 **SECTION 8.4.** G.S. 58-3-175(a) reads as rewritten:

6 "(a) As used in this section, "health benefit plan" has the same meaning as in
7 G.S. 58-50-110(11) and includes the Teachers' and State Employees' Comprehensive
8 Major Medical ~~Plan~~. Plan and any optional plans or programs operating under Part 2 of
9 Article 3 of Chapter 135 of the General Statutes."

10 **SECTION 8.5.** G.S. 58-50-75(b) reads as rewritten:

11 "(b) This Part applies to all insurers that offer a health benefit plan and that
12 provide or perform utilization review pursuant to G.S. 58-50-61, the Teachers' and State
13 Employees' Comprehensive Major Medical Plan, any optional plans or programs
14 operating under Part 2 of Article 3 of Chapter 135 of the General Statutes, and the
15 Health Insurance Program for Children. With respect to second-level grievance review
16 decisions, this Part applies only to second-level grievance review decisions involving
17 noncertification decisions."

18 **SECTION 8.6.** G.S. 58-51-115(a) reads as rewritten:

19 "(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

20 (1) "Health benefit plan" means any accident and health insurance policy
21 or certificate; a nonprofit hospital or medical service corporation
22 contract; a health maintenance organization subscriber contract; a plan
23 provided by a multiple employer welfare arrangement; the Teachers'
24 and State Employees' Comprehensive Major Medical Plan and any
25 optional plans or programs operating under Part 2 of Article 3 of
26 Chapter 135 of the General Statutes; or a plan provided by another
27 benefit arrangement. "Health benefit plan" does not mean a Medicare
28 supplement policy as defined in G.S. 58-54-1(5).

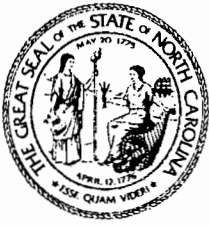
29 (2) "Health insurer" means any health insurance company subject to
30 Articles 1 through 63 of this Chapter, including a multiple employee
31 welfare arrangement, and any corporation subject to Articles 65 and 67
32 of this Chapter; a group health plan, as defined in section 607(1) of the
33 Employee Retirement Income Security Act of 1974; and the Teachers'
34 and State Employees' Comprehensive Major Medical Plan and any
35 optional plans or programs operating under Part 2 of Article 3 of
36 Chapter 135 of the General Statutes."

37
38 **PART IX. EFFECT OF HEADINGS.**

39 **SECTION 9.** The headings to the parts of this act are a convenience to the
40 reader and are for reference only. The headings do not expand, limit, or define the text
41 of this act.

42
43 **PART X. EFFECTIVE DATES.**

1 **SECTION 10.** Part I of this act becomes effective January 1, 2008, and
2 applies to violations occurring on or after that date. Sections 7.4 and 7.5 apply to
3 renewal applications submitted on or after October 1, 2007. Section 10 and Parts II, III,
4 V, and VIII are effective when the bill becomes law. The remainder of the act becomes
5 effective October 1, 2007, and applies to policies issued or renewed on or after that date.



HOUSE BILL 731: Revise Life and Health Insurance Laws.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2007
Introduced by:	Reps. Goforth, Holliman	Summary by:	Tim Hovis
Version:	PCS to Second Edition H731-CSRG-50		Committee Counsel, Kory Goldsmith Staff Attorney

SUMMARY: *House Bill 731 amends a variety of statutes related to life and health insurance.*

[As introduced, this bill was identical to S736, as introduced by Sen. Dalton, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

BILL ANALYSIS:

Section 1.1 creates a new Part 4 in Article 60 of Chapter 58 regarding the Suitability of Annuity Transactions. The language is based in part upon the NAIC model act. It creates a duty upon insurers and insurance producers to have reasonable grounds for believing that any recommended annuity product is suitable for the consumer. It specifically does not create an individual cause of action by the consumer. It requires insurance producers and insurers to put in place procedures to supervise recommendations made regarding the purchase of annuity contracts and to keep relevant records for at least five years. It also allows the Commissioner to order appropriate corrective actions if a consumer is harmed by a violation of the Part and provides that an insurer violating this Part is subject to license revocation or suspension, and the payment of monetary penalties or restitution. A violation of this Part is also an unfair and deceptive act or practice in violation of G.S. 58-63-10 and is subject to a cease and desist order and penalty of not less than \$1,000 nor more than \$5,000 for each violation.

Section 1.2 requires that an annuity contract may only be issued upon application by the applicant.

Section 1.3 prohibits a surrender fee if a death benefit for an annuity is delivered during the surrender period.

Section 2.1 amends the provisions that require certain disclosures in individual health insurance policies. This specific provision relates to when a preexisting condition must be covered under a new policy.

Section 2.2 essentially creates a provision for individual health insurance policies regarding creditable coverage that is parallel to the provisions that apply to group health insurance policies under HIPAA. It also includes short-term limited duration health insurance coverage for purposes of creditable coverage.

Sections 2.3 – 2.5 enact the remaining HIPAA regulations. Insurance carriers and employer groups already have to comply with these requirements. These additions apply to "special enrollees" who are persons who may be added to a group plan because of a change in status, such as a birth, marriage or adoption. Special enrollees may not be treated differently than other enrollees. An insurer must give notice when it is going to exclude someone due to a preexisting condition.

Section 2.6 provides that if a group life insurance policy allows a person to continue to receive coverage after leaving the group, then the insurer may not impose different underwriting or health requirements.

House Bill 731

Page 2

Section 3.1 and 3.2 define the timelines as business days for insureds who have exhausted all appeals through an insurance policy and have requested an independent review of a denial of health insurance coverage.

Section 3.3 changes the Department's reporting requirement regarding External Reviews. The Department would be required to submit a report annually, instead of semiannually, to the Joint Legislative Health Care Oversight Committee.

Section 4.1 includes in the definition of "long-term care insurance" annuity and insurance policies that supplement or directly provide long-term care, and policies or riders that provide payment of benefits based upon cognitive impairment or loss of functional capacity. It does not include policies that accelerate death benefits for certain qualifying events or conditions.

Sections 5.1 and 5.2 specify how a small employer carrier must report its plan elections to the Department.

Section 6.1 and 6.2 provide a definition regarding how actuaries will calculate the premiums on credit life insurance.

Section 7.1 adds continuing care providers, viatical settlement providers, and professional employer organizations to the list of regulated entities that are prohibited from including in any contract a stipulation concerning the court or jurisdiction in which any suit or action on a contract may be brought.

Section 7.2 attempts to clarify the definition of health benefit plans that are subject to HIPAA.

Section 7.3 provides that a policyholder will be deemed to have accepted a transfer of the policy to another insurer (that is purchasing the original insurer) unless the policyholder has affirmatively responded to the initial, required notification of the transfer.

Sections 7.4 and 7.5 provide that a Third Part Administrator's (TPA) failure to annually renew its license or registration will result in the expiration of that license or registration.

Section 7.6 removes the requirement that in order to be considered a "group" life insurance; the policy must cover at least 10 employees on the date of issuance. No other minimum number of employees is required.

Section 7.7 includes in the definition of "Viatical settlement provider" a person that resides in North Carolina, but issues contracts for individuals outside this state.

Sections 8.1 to 8.6 make technical changes to reference in Chapter 58 regarding the Teachers' and State Employees' Comprehensive Major Medical Plan to also include any optional plans or programs offered under Part 2 of Article 3 of Chapter 135.

EFFECTIVE DATE: Part I regarding the Suitability of Annuity Contracts becomes effective January 1, 2008. Part IV regarding the type of insurance contracts that constitute long-term care contracts becomes effective October 1, 2007. The remainder of the act is effective when it becomes law.

H0731e2-SMRG-CSRG-50

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 731*

Committee Substitute Favorable 5/2/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H731-PCS80464-RG-50

Short Title: Revise Life and Health Insurance Laws.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS PURCHASING ANNUITY PRODUCTS;
ADDRESS PORTABILITY IN ACCIDENT AND HEALTH AND LIFE
INSURANCE; MAKE MINOR CHANGES IN THE LAWS ON MANAGED
CARE EXTERNAL REVIEWS; CLARIFY DEFINITIONS IN LONG-TERM
CARE INSURANCE; ADDRESS SMALL EMPLOYER CARRIER PLAN
ELECTIONS; DEFINE "CRITICAL PERIOD CONVERSION RATIO" FOR
CREDIT INSURANCE; MAKE MISCELLANEOUS AMENDMENTS TO
OTHER PROVISIONS RELATED TO LIFE AND HEALTH INSURANCE; AND
MAKE TECHNICAL CORRECTIONS IN INSURANCE CODE REFERENCES
TO THE TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

PART I. SUITABILITY IN ANNUITY TRANSACTIONS.

SECTION 1.1. Article 60 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 4. Suitability in Annuity Transactions.

"§ 58-60-150. Title and reference.

This Part may be cited as the "Suitability in Annuity Transactions Act".

"§ 58-60-155. Purpose; scope.

(a) The purpose of this Part is to set forth standards and procedures for
recommendations to consumers that result in a transaction involving annuity products so
that the insurance needs and financial objectives of consumers at the time of the
transaction are appropriately addressed.

(b) This Part shall apply to any recommendation to purchase or exchange an
annuity made to a consumer by an insurance producer, or an insurer where no producer
is involved, that results in the purchase or exchange recommended.

"§ 58-60-160. Exemptions.

Unless otherwise specifically included, this Part does not apply to recommendations involving any of the following:

- (1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this Part.
- (2) Contracts used to fund any of the following:
 - a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).
 - b. A plan described by section 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code if established or maintained by an employer.
 - c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under section 457 of the Internal Revenue Code.
 - d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
 - e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.
 - f. Formal prepaid funeral contracts.

"§ 58-60-165. Definitions.

As used in this Part:

- (1) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
- (2) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).
- (3) "Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

"§ 58-60-170. Duties of insurers and insurance producers.

(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Before recommending the purchase or exchange of an annuity resulting from a recommendation, the insurance producer, or the insurer where no producer is involved, shall make reasonable efforts to obtain information about the particular consumer's circumstances, including, but not limited to, all of the following:

1 (1) The consumer's financial status.

2 (2) The consumer's tax status.

3 (3) The consumer's investment objectives.

4 (4) Any other information used or considered to be reasonable by the
5 insurance producer, or the insurer where no producer is involved, in
6 making recommendations to the consumer.

7 (c) Except as provided under subdivision (1) of this subsection, neither an
8 insurance producer, nor an insurer where no producer is involved, shall have any
9 obligation to a consumer under subsection (a) of this section related to any
10 recommendation if a consumer does any of the following:

11 (1) Refuses to provide relevant information requested by the insurer or
12 insurance producer. An insurer or insurance producer's
13 recommendation subject to this subdivision shall be reasonable under
14 all the circumstances actually known to the insurer or insurance
15 producer at the time of the recommendation.

16 (2) Decides to enter into an insurance transaction that is not based on a
17 recommendation of the insurer or insurance producer.

18 (3) Fails to provide complete or accurate information requested by the
19 insurer or insurance producer.

20 (d) An insurer either shall assure that a system to supervise recommendations
21 that is reasonably designed to achieve compliance with this Part is established and
22 maintained by complying with subsections (e), (f), and (g) of this section, or shall
23 establish and maintain such a system, including:

24 (1) Maintaining written procedures.

25 (2) Conducting periodic reviews of its records that are reasonably
26 designed to assist in detecting and preventing violations of this Part.

27 (e) A general agent and independent agency either shall adopt a system
28 established by an insurer to supervise recommendations of its insurance producers that
29 is reasonably designed to achieve compliance with this Part, or shall establish and
30 maintain such a system, including:

31 (1) Maintaining written procedures.

32 (2) Conducting periodic reviews of records that are reasonably designed to
33 assist in detecting and preventing violations of this Part.

34 (f) An insurer may contract with a third party, including a general agent or
35 independent agency, to establish and maintain a system of supervision as required by
36 subsection (d) of this section with respect to insurance producers under contract with, or
37 employed by, the third party. An insurer shall make reasonable inquiry to assure that the
38 third-party contracting under this subsection is performing the functions required under
39 subsection (d) of this section and shall take any action that is reasonable under the
40 circumstances to enforce the contractual obligation to perform the functions. An insurer
41 may comply with its obligation to make reasonable inquiry by doing all of the
42 following:

43 (1) The insurer annually obtains a certification from a third-party senior
44 manager who has responsibility for the delegated functions that the

1 manager has a reasonable basis to represent, and does represent, that
2 the third party is performing the required functions. No person may
3 provide a certification under this subdivision unless (i) the person is a
4 senior manager with responsibility for the delegated functions; and (ii)
5 the person has a reasonable basis for making the certification.

6 (2) The insurer, based on reasonable selection criteria, periodically selects
7 third parties contracting under this subsection for a review to
8 determine whether the third parties are performing the required
9 functions. The insurer shall perform those procedures to conduct the
10 review that are reasonable under the circumstances.

11 An insurer that contracts with a third party, and that complies with the requirements
12 to supervise the third party pursuant to this subsection, shall have fulfilled its
13 responsibilities under subsection (d) of this section.

14 A general agent or independent agency contracting with an insurer shall promptly,
15 when requested by the insurer pursuant to this subsection, give a certification as
16 described in this subsection or give a clear statement that it is unable to meet the
17 certification criteria.

18 (g) An insurer, general agent, or independent agency is not required by
19 subsections (d) or (e) of this section to:

20 (1) Review, or provide for review of, all insurance producer solicited
21 transactions; or

22 (2) Include in its system of supervision an insurance producer's
23 recommendations to consumers of products other than the annuities
24 offered by the insurer, general agent, or independent agency.

25 (h) Compliance with the National Association of Securities Dealers Conduct
26 Rules pertaining to suitability shall satisfy the requirements under this section for the
27 recommendation of variable annuities. However, nothing in this subsection limits the
28 Commissioner's ability to enforce the provisions of this Part.

29 **"§ 58-60-175. Mitigation of responsibility.**

30 (a) The Commissioner may order:

31 (1) An insurer to take reasonably appropriate corrective action for any
32 consumer harmed by the insurer's, or by its insurance producer's,
33 violation of this Part.

34 (2) An insurance producer to take reasonably appropriate corrective action
35 for any consumer harmed by the insurance producer's violation of this
36 Part.

37 (3) A general agency or independent agency that employs or contracts
38 with an insurance producer to sell, or solicit the sale, of annuities to
39 consumers, to take reasonably appropriate corrective action for any
40 consumer harmed by the insurance producer's violation of this Part.

41 (b) Any applicable penalty under G.S. 58-2-70 for a violation of subsection (a) or
42 (b) of G.S. 58-60-170 may be reduced or eliminated if corrective action for the
43 consumer was taken promptly after a violation was discovered.

(c) A violation of this Part is an unfair method of competition and unfair and deceptive act or practice in the business of insurance in violation of G.S. 58-63-10.

"§ 58-60-180. Record keeping.

(a) Insurers, general agents, independent agencies, and insurance producers shall maintain or be able to make available to the Commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this Part may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document."

SECTION 1.2. Article 58 of Chapter 58 of the General Statutes is amended by adding two new sections to read:

"§ 58-58-146. Application for annuities required.

Each individual annuity contract shall be issued only upon application of the applicant. Any application or enrollment form is subject to G.S. 58-3-150, and if taken by an agent, shall include the certificate of the agent that the agent has truly and accurately recorded on the application or enrollment form the information provided by the applicant. Every annuity contract subject to this section shall contain as part of the contract the original or reproduction of the application required by this section.

"§ 58-58-147. Surrender fees on death benefits.

No authorized insurer shall deliver or issue for delivery in this State any deferred annuity contract that contains a provision that reduces the death benefit of the contract by a surrender fee when death occurs during the surrender period."

PART II. PORTABILITY IN ACCIDENT AND HEALTH AND LIFE INSURANCE.

SECTION 2.1. G.S. 58-51-15(a)(2)b. reads as rewritten:

"(2) A provision in the substance of the following language:

TIME LIMIT ON CERTAIN DEFENSES:

...

- b. This policy contains a provision limiting coverage for preexisting conditions. Preexisting conditions are covered under this policy ____ (insert number of months or days, not to exceed one year) after the effective date of coverage. Preexisting conditions mean "those conditions for which medical advice, diagnosis, care, or treatment was received or recommended within the one-year period immediately preceding the effective date of the person's coverage." ~~Except for the excepted benefits described in G.S. 58-68-25(b), credit~~ Credit for having satisfied some or all of the preexisting condition waiting periods under previous health benefits coverage shall be given in accordance with ~~G.S. 58-68-30.~~

G.S. 58-51-17. The excepted benefits described in G.S. 58-68-25(b) are not subject to this requirement for giving credit."

SECTION 2.2. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-51-17. Portability for accident and health insurance.

(a) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this section, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
- b. Group or individual health insurance coverage.
- c. Part A or part B of title XVIII of the Social Security Act.
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- e. Chapter 55 of title 10, United States Code.
- f. A medical care program of the Indian Health Service or of a tribal organization.
- g. A State health benefits risk pool.
- h. A health plan offered under chapter 89 of title 5, United States Code.
- i. A public health plan (as defined in federal regulations).
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
- k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits as described in G.S. 58-68-25(b). However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section.

(2) Not counting periods before significant breaks in coverage. –

- a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under an individual health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.
- b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (b)(3) of this section, any period that an individual is in a waiting period, as defined in G.S. 58-68-30(b)(4)c., for any coverage under an individual health insurance plan shall not

- 1 be taken into account in determining the continuous period
2 under sub-subdivision a. of this subdivision.
- 3 c. For an individual who elects COBRA continuation coverage
4 during the second election period provided under the Trade Act
5 of 2002, the days between the date the individual lost group
6 health plan coverage and the first day of the second COBRA
7 election period shall not be considered when determining
8 whether a significant break in coverage has occurred.
- 9 (3) Method of crediting coverage. – An individual health insurer shall
10 count a period of creditable coverage without regard to the specific
11 benefits covered during the period.
- 12 (4) Establishment of period. – Periods of creditable coverage for an
13 individual shall be established through presentation of certifications
14 described in subsection (c) of this section or in another manner that is
15 specified in regulations.
- 16 (5) Determination of creditable coverage. –
- 17 a. Determination within reasonable time. – If an individual health
18 insurer receives creditable coverage information under
19 subsection (c) of this section, the insurer shall, within a
20 reasonable time following receipt of the information, make a
21 determination regarding the amount of the individual's
22 creditable coverage and the length of any exclusion that
23 remains. Whether this determination is made within a
24 reasonable time depends on the relevant facts and
25 circumstances. Relevant facts and circumstances include
26 whether a plan's application of a preexisting condition exclusion
27 would prevent an individual from having access to urgent
28 medical care.
- 29 b. No time limit on presenting evidence of creditable coverage. –
30 An individual health insurer shall not impose any limit on the
31 amount of time that an individual has to present a certificate or
32 other evidence of creditable coverage.
- 33 (b) Exceptions. –
- 34 (1) Exclusion not applicable to certain newborns. – Subject to subdivision
35 (3) of this subsection, an individual health insurer shall not impose any
36 preexisting condition exclusion in the case of an individual who, as of
37 the last day of the 30-day period beginning with the individual's date
38 of birth, is covered under creditable coverage.
- 39 (2) Exclusion not applicable to certain adopted children. – Subject to
40 subdivision (3) of this subsection, a group health insurer shall not
41 impose any preexisting condition exclusion in the case of a child who
42 is adopted or placed for adoption before attaining 18 years of age and
43 who, as of the last day of the 30-day period beginning on the date of
44 the adoption or placement for adoption, is covered under creditable

coverage. The previous sentence does not apply to coverage before the date of the adoption or placement for adoption.

(3) Loss if break in coverage. – Subdivisions (1) and (2) of this subsection shall no longer apply to an individual after the end of the first 63-day period during all of which the individual was not covered under any creditable coverage.

(c) Certifications and Disclosure of Coverage. –

(1) In general. – An individual health insurer shall provide the certification described in this subdivision (i) at the time an individual ceases to be covered under the plan, and (ii) on the request on behalf of an individual made not later than 24 months after the date of cessation of the coverage described in clause (i) of this subdivision, whichever is later.

(2) Certification. – The certification described in this subdivision is a written certification of (i) the period of creditable coverage of the individual under the plan and (ii) any waiting period and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan."

SECTION 2.3. G.S. 58-68-30(c) reads as rewritten:

"(c) Rules Relating to Crediting Previous Coverage. –

(1) Creditable coverage defined. – For the purposes of this Article, "creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:

- a. A self-funded employer group health plan under the Employee Retirement Income Security Act of 1974.
- b. Group or individual health insurance coverage.
- c. Part A or part B of title XVIII of the Social Security Act.
- d. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928.
- e. Chapter 55 of title 10, United States Code.
- f. A medical care program of the Indian Health Service or of a tribal organization.
- g. A State health benefits risk pool.
- h. A health plan offered under chapter 89 of title 5, United States Code.
- i. A public health plan (as defined in federal regulations).
- j. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. § 2504(e)).
- k. Title XXI of the Social Security Act (State Children's Health Insurance Program).

"Creditable coverage" does not include coverage consisting solely of coverage of excepted benefits. However, short-term limited-duration health insurance coverage shall be considered creditable coverage for purposes of this section and G.S. 58-51-15(a)(2)b.

- (2) Not counting periods before significant breaks in coverage. –
- a. In general. – A period of creditable coverage shall not be counted, with respect to enrollment of an individual under a group health insurance plan, if, after the period and before the enrollment date, there was a 63-day period during all of which the individual was not covered under any creditable coverage.
- b. Waiting period not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision and subdivision (d)(4) of this subsection, any period that an individual is in a waiting period for any coverage under a group health insurance plan or is in an affiliation period shall not be taken into account in determining the continuous period under sub-subdivision a. of this subdivision.
- c. Time spent on short term limited duration health insurance not treated as a break in coverage. – For the purposes of sub-subdivision a. of this subdivision, any period that an individual is enrolled on a short term limited duration health insurance policy shall not be taken into account in determining the continuous period under sub-subdivision. a. of this subdivision so long as the period of time spent on the short term limited duration health insurance policy or policies does not exceed 12 months.
- d. For an individual who elects COBRA continuation coverage during the second election period provided under the Trade Act of 2002, the days between the date the individual lost group health plan coverage and the first day of the second COBRA election period shall not be considered when determining whether a significant break in coverage has occurred.
- (3) Method of crediting coverage. –
- a. Standard method. – Except as otherwise provided under sub-subdivision b. of this subdivision for the purposes of applying subdivision (a)(3) of this subsection, a group health insurer shall count a period of creditable coverage without regard to the specific benefits covered during the period.
- b. Election of alternative method. – A group health insurer may elect to apply subdivision (a)(3) of this subsection based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations rather than as provided under sub-subdivision a. of this subdivision. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election a group health insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within the class or category.

- 1 c. Health insurer notice. – In the case of an election under
2 sub-subdivision b. of this subdivision with respect to health
3 insurance coverage in the small or large group market, the
4 health insurer: (i) shall prominently state in any disclosure
5 statements concerning the coverage, and to each employer at
6 the time of the offer or sale of the coverage, that the health
7 insurer has made the election, and (ii) shall include in the
8 statements a description of the effect of the election.
- 9 (4) Establishment of period. – Periods of creditable coverage for an
10 individual shall be established through presentation of certifications
11 described in subsection (e) of this section or in another manner that is
12 specified in federal regulations.
- 13 (5) Determination of creditable coverage. –
- 14 a. Determination within reasonable time. – If a group health
15 insurer receives creditable coverage information under
16 subsection (e) of this section, the group health insurer shall,
17 within a reasonable time following receipt of the information,
18 make a determination regarding the amount of the individual's
19 creditable coverage and the length of any exclusion that
20 remains. Whether this determination is made within a
21 reasonable time depends on the relevant facts and
22 circumstances. Relevant facts and circumstances include
23 whether a plan's application of a preexisting condition exclusion
24 would prevent an individual from having access to urgent
25 medical care.
- 26 b. No time limit on presenting evidence of creditable coverage. –
27 A group health insurer shall not impose any limit on the amount
28 of time that an individual has to present a certificate or other
29 evidence of creditable coverage."

30 **SECTION 2.4.** G.S. 58-68-30(f) reads as rewritten:

31 "(f) Special Enrollment Periods. –

- 32 (1) Individuals losing other coverage. – A group health insurer shall
33 permit an employee who is eligible, but not enrolled, for coverage
34 under the terms of the plan (or a dependent of the employee if the
35 dependent is eligible, but not enrolled, for coverage under the terms) to
36 enroll for coverage under the terms of the plan if each of the following
37 conditions is met:
- 38 a. The employee or dependent was covered under an ERISA
39 group health plan or had health insurance coverage at the time
40 coverage was previously offered to the employee or dependent.
- 41 b. The employee stated in writing at the time that coverage under
42 the group health plan or health insurance coverage was the
43 reason for declining enrollment, but only if the health insurer
44 required the statement at the time and provided the employee

1 with notice of the requirement and the consequences of the
2 requirement at the time.

- 3 c. With respect to the employee's or dependent's coverage
4 described in sub-subdivision a. of this subsection: (i) the
5 coverage was under a COBRA continuation provision and the
6 coverage under the provision was exhausted; (ii) the coverage
7 was not under that provision and either the coverage was
8 terminated because of loss of eligibility for the coverage,
9 including legal separation, divorce, cessation of dependent
10 status (such as attaining the maximum age to be eligible as a
11 dependent child under the plan), death of an employee,
12 termination of employment, reduction in the number of hours of
13 employment, and any loss of eligibility for coverage after a
14 period that is measured by reference to any of the foregoing;
15 (iii) employer contributions toward the coverage were
16 terminated; (iv) in the case of coverage offered through an
17 arrangement that does not provide benefits to individuals who
18 no longer reside, live, or work in a service area, there has been
19 loss of coverage because an individual no longer resides, lives,
20 or works in the service area (whether or not within the choice of
21 the individual), and no other benefit package is available to the
22 individual; (v) an individual incurs a claim that would meet or
23 exceed a lifetime limit on all benefits; or (vi) a plan no longer
24 offers any benefits to the class of similarly situated individuals
25 that includes the individual; or (vii) the health insurer
26 terminated coverage under G.S. 58-68-45(c)(2).

- 27 d. Under the terms of the plan, the employee requests the
28 enrollment not later than 30 days after the date of the applicable
29 event described in sub-subdivision c. of this subdivision.

30 (2) For dependent beneficiaries. —

- 31 a. In general. — If: (i) a group health insurance plan makes
32 coverage available with respect to a dependent of an individual,
33 (ii) the individual is a participant under the plan (or has met any
34 waiting period applicable to becoming a participant under the
35 plan and is eligible to be enrolled under the plan but for a
36 failure to enroll during a previous enrollment period), and (iii) a
37 person becomes the dependent of the individual through
38 marriage, birth, or adoption or placement for adoption.

39 The plan shall provide for a dependent special enrollment period
40 described in sub-subdivision b. of this subdivision during which the
41 person (or, if not otherwise enrolled, the individual) may be enrolled
42 under the plan as a dependent of the individual, and in the case of the
43 birth or adoption of a child, the spouse of the individual may be

enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.

b. Dependent special enrollment period. – A dependent special enrollment period under this sub-subdivision shall be a period of not less than 30 days and shall begin on the later of: (i) the date dependent coverage is made available, or (ii) the date of the marriage, birth, or adoption or placement for adoption described in sub-subdivision a.(iii) of this subdivision.

c. No waiting period. – If an individual seeks to enroll a dependent during the first 30 days of the dependent's special enrollment period, the coverage of the dependent shall become effective: (i) in the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received; (ii) in the case of a dependent's birth, as of the date of the birth; or (iii) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.

(3) Treatment of special enrollees. –

a. If an individual requests enrollment while the individual is entitled to special enrollment under this subsection, the individual is a special enrollee, even if the request for enrollment coincides with a late enrollment opportunity under the plan. Therefore, the individual cannot be considered a late enrollee.

b. Special enrollees shall be offered all of the benefit packages available to similarly situated individuals who enroll when first eligible. For this purpose, any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package. In addition, a special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls in the same coverage when first eligible. The length of any preexisting condition exclusion that may be applied to a special enrollee cannot exceed the length of any preexisting condition exclusion that is applied to similarly situated individuals who enroll when first eligible."

SECTION 2.5. G.S. 58-68-30 is amended by adding the following new subsections to read:

"(h) General Notice of Preexisting Condition Exclusion. – A group health insurer offering group health insurance coverage subject to a preexisting condition exclusion shall provide a written general notice of preexisting condition exclusion to participants under the plan; and shall not impose a preexisting condition exclusion with respect to a participant or a dependent of the participant until the notice is provided.

A group health insurer shall provide the general notice of preexisting condition exclusion as part of any written application materials distributed by the insurer for

1 enrollment. If the insurer does not distribute these materials, the notice shall be provided
2 by the earliest date following a request for enrollment that the insurer, acting in a
3 reasonable and prompt fashion, can provide the notice.

4 The general notice of preexisting condition exclusion shall notify participants of the
5 following:

- 6 (1) The existence and terms of any preexisting condition exclusion under
7 the plan. This description includes the length of the plan's look-back
8 period, which shall not exceed six months under subdivision (a)(1) of
9 this section; the maximum preexisting condition exclusion period
10 under the plan, which shall not exceed 12 months (18 months for late
11 enrollees) under subdivision (a)(2) of this section; and how the plan
12 will reduce the maximum preexisting condition exclusion period by
13 creditable coverage, as described in subsection (c) of this section.
14 (2) A description of the rights of individuals to demonstrate creditable
15 coverage, and any applicable waiting periods, through a certificate of
16 creditable coverage, as required by subsection (e) of this section, or
17 through other means as described in federal regulations. This shall
18 include a description of the right of the individual to request a
19 certificate from a prior insurer, if necessary, and a statement that the
20 current insurer will assist in obtaining a certificate from any prior plan
21 or insurer, if necessary.
22 (3) A person to contact, including an address or telephone number for
23 obtaining additional information or assistance about the preexisting
24 condition exclusion.

25 Nothing in this subsection affects a group health insurer's responsibility under this
26 section to fully disclose in the master group policy, the certificate or evidence of
27 coverage, and the member handbook the plan's preexisting condition limitation, the
28 rules relating to creditable coverage, including how an individual may provide proof of
29 creditable coverage, and the methods of counting and crediting coverage.

30 (i) Individual Notice of Period of Preexisting Condition Exclusion. – After an
31 individual has presented evidence of creditable coverage and the group health insurer
32 has made a determination of creditable coverage under subdivision (c)(5) of this section,
33 the group health insurer shall provide the individual a written notice of the length of
34 preexisting condition exclusion that remains after offsetting for prior creditable
35 coverage. In the notice, the insurer is not required to identify any medical conditions
36 specific to the individual that could be subject to the exclusion. A group health insurer is
37 not required to provide this notice if the plan does not impose any preexisting condition
38 exclusion on the individual or if the plan's preexisting condition exclusion is completely
39 offset by the individual's prior creditable coverage.

40 The individual notice must be provided by the earliest date following a
41 determination that the group health insurer, acting in a reasonable and prompt fashion,
42 can provide the notice.

43 A group health insurer shall disclose:

- 1 (1) Its determination of any preexisting condition exclusion period that
2 applies to the individual, including the last day on which the
3 preexisting condition exclusion applies.
4 (2) The basis for that determination, including the source and substance of
5 any information on which the plan or insurer relied.
6 (3) An explanation of the individual's right to submit additional evidence
7 of creditable coverage.
8 (4) A description of any applicable appeal procedures established by the
9 group health insurer.
10 (j) Determination Modification. – Nothing in this section prevents a plan or
11 insurer from modifying an initial determination of creditable coverage if it determines
12 that the individual did not have the claimed creditable coverage, provided that:
13 (1) A notice of the new determination, consistent with the requirements of
14 subsection (i) of this section, is provided to the individual; and
15 (2) Until the notice of the new determination is provided, the group health
16 insurer, for purposes of approving access to medical services (such as
17 a presurgery authorization), acts in a manner consistent with the initial
18 determination.
19 (k) Notice Form and Content. – Any notices required under this section shall be
20 in the form and content and be delivered as prescribed by, in accordance with, or as
21 specified in federal regulations, unless otherwise provided in this Chapter."

22 **SECTION 2.6.** Article 58 of Chapter 58 of the General Statutes is amended
23 by adding a new section to read:

24 **"§ 58-58-141. Portability of group life insurance.**

25 (a) Definition. – For purposes of this section, "portability" means the prerogative
26 to continue existing group life insurance coverage, or access alternate group life
27 insurance coverage, that may be provided by a group life insurance policy to an
28 individual insured after the individual's affiliation with the initial group terminates.

29 (b) Applicability. – This section applies to all certificates issued under group
30 policies that are used in this State. This section also applies to a certificate issued under
31 a policy issued and delivered to a trust or to an association outside of this State and
32 covering persons residing in this State.

33 (c) Prohibitions. – The use of health questions, underwriting, or eligibility
34 requirements that pertain to health status is prohibited when an individual insured elects
35 to access a portability option provided by a group life insurance policy."

36
37 **PART III. EXTERNAL REVIEW.**

38 **SECTION 3.1.** G.S. 58-50-82(b)(1) reads as rewritten:

39 "(b) Within three business days of receiving a request for an expedited external
40 review, the Commissioner shall complete all of the following:

- 41 (1) Notify the insurer that made the noncertification, noncertification
42 appeal decision, or second-level grievance review decision which is
43 the subject of the request that the request has been received and
44 provide a copy of the request or verbally convey all of the information

1 included in the request. The Commissioner shall also request any
2 information from the insurer necessary to make the preliminary review
3 set forth in G.S. 58-50-80(b)(2) and require the insurer to deliver the
4 information not later than one business day after the request was made.

5"

6 **SECTION 3.2.** G.S. 58-50-82(c) reads as rewritten:

7 "(c) As soon as possible, but within the same business day of receiving notice
8 under subdivision (b)(2) of this section that the request has been assigned to a review
9 organization, the insurer or its designee utilization review organization shall provide or
10 transmit all documents and information considered in making the noncertification
11 appeal decision or the second-level grievance review decision to the assigned review
12 organization electronically or by telephone or facsimile or any other available
13 expeditious method. A copy of the same information shall be sent by the same means or
14 other expeditious means to the covered person or the covered person's representative
15 who made the request for expedited external review."

16 **SECTION 3.3.** G.S. 58-50-95 reads as rewritten:

17 **"§ 58-50-95. Report by Commissioner.**

18 The Commissioner shall report ~~semiannually~~ annually to the Joint Legislative
19 Health Care Oversight Committee regarding the nature and appropriateness of reviews
20 conducted under this Part. The report, which shall be provided to the public upon
21 request, should include the number of reviews, underlying issues in dispute, character of
22 the reviews, dollar amounts in question, whether the review was decided in favor of the
23 covered person or the health benefit plan, the cost of review, and any other information
24 relevant to the evaluation of the effectiveness of this Part."

25
26 **PART IV. LONG-TERM CARE INSURANCE.**

27 **SECTION 4.** G.S. 58-55-20(4) reads as rewritten:

28 "(4) "Long-term care insurance" means any policy or certificate advertised,
29 marketed, offered, or designed to provide coverage for not less than 12
30 consecutive months for each covered person on an expense incurred,
31 indemnity, prepaid, or other basis, for one or more necessary or
32 medically necessary diagnostic, preventive, therapeutic, rehabilitative,
33 maintenance, or personal care services, provided in a setting other than
34 an acute care unit of a hospital. "Long-term care insurance" ~~includes~~
35 group includes:

36 a. Group and individual annuities and life insurance policies or
37 riders that supplement or directly provide long-term care
38 insurance.

39 b. A policy or rider that provides for payment of benefits based
40 upon cognitive impairment or the loss of functional capacity.

41 c. Qualified long-term care insurance contracts.

42 d. Group and individual policies whether issued by insurers,
43 fraternal benefit societies, nonprofit health, hospital, and
44 medical service corporations prepaid health plans, health

1 maintenance organizations, or any similar organization.
2 "Long-term care insurance" does not include any policy that is
3 offered primarily to provide basic Medicare supplement
4 coverage, basic hospital expense coverage, basic
5 medical-surgical expense coverage, hospital confinement
6 indemnity coverage, major medical expense coverage, disability
7 income protection coverage, accident only coverage, specified
8 disease or specified accident coverage, or limited benefit health
9 coverage.

10 With regard to life insurance, "long-term care insurance" does not
11 include life insurance policies that accelerate the death benefit
12 specifically for one or more of the qualifying events of terminal
13 illness, medical conditions requiring extraordinary medical
14 intervention or permanent institutional confinement, and that provide
15 the option of a lump-sum payment for those benefits and where neither
16 the benefits nor the eligibility for the benefits is conditioned upon the
17 receipt of long-term care."
18

19 **PART V. SMALL EMPLOYER GROUP HEALTH INSURANCE.**

20 **SECTION 5.1.** G.S. 58-50-126(d) reads as rewritten:

21 "(d) Election. – The small employer carrier elections of the policies to be offered
22 under this section shall apply uniformly to all small employers in this State for that
23 small employer carrier. The election shall be effective for a period of not less than two
24 years. An election under this section shall be made in accordance with G.S. 58-50-127."

25 **SECTION 5.2.** Article 50 of Chapter 58 of the General Statutes is amended
26 by adding a new section to read:

27 **"§ 58-50-127. Small employer carrier plan elections.**

28 A small employer carrier shall submit, in a format prescribed by the Commissioner,
29 an election pursuant to G.S. 58-50-125(d) pertaining to the offering of at least one basic
30 and standard health care plan or the alternative health care plans as provided in
31 G.S. 58-50-126. The election shall be effective for a period of not less than two years.
32 The election shall be submitted with policy forms when they are submitted for approval,
33 or if the policy forms have been previously approved, then no later than February 1 of
34 the year in which the small employer carrier wishes the election to begin. If a small
35 employer carrier does not make a new election, or if the new election is not approved if
36 applicable, the existing election at the end of the two-year election period shall continue
37 to apply for another two-year period."
38

39 **PART VI. CREDIT INSURANCE.**

40 **SECTION 6.1.** G.S. 58-57-5 is amended by adding a new subdivision after
41 G.S. 58-57-5(5b) to read:

42 "(5b) "Critical period conversion ratio" means the ratio of the benefit value
43 of the critical period divided by the benefit value of the full term."

1 **SECTION 6.2.** G.S. 58-57-35 is amended by adding a new subsection to
2 read:

3 "(d) Premium rates for benefits provided during a critical period shall be adjusted
4 by a critical period conversion ratio that reduces the rates giving recognition to the
5 shorter benefit period provided."

6
7 **PART VII. MISCELLANEOUS PROVISIONS.**

8 **SECTION 7.1.** G.S. 58-3-35 reads as rewritten:

9 **"§ 58-3-35. Stipulations as to jurisdiction and limitation of actions.**

10 (a) No insurer, self-insurer, service corporation, HMO, ~~or MEWA~~ MEWA,
11 continuing care provider, viatical settlement provider, or professional employer
12 organization licensed under this Chapter shall make any condition or stipulation in its
13 ~~insurance contracts or policies~~ concerning the court or jurisdiction in which any suit or
14 action on the contract may be brought.

15 (b) No insurer, self-insurer, service corporation, HMO, ~~or MEWA~~ MEWA,
16 continuing care provider, viatical settlement provider, or professional employer
17 organization licensed under this Chapter shall limit the time within which any suit or
18 action referred to in subsection (a) of this section may be commenced to less than the
19 period prescribed by law.

20 (c) All conditions and stipulations forbidden by this section are void."

21 **SECTION 7.2.** G.S. 58-3-167(a)(1) reads as rewritten:

22 "(1) "Health benefit plan" means an accident and health insurance policy or
23 certificate; a nonprofit hospital or medical service corporation
24 contract; a health maintenance organization subscriber contract; a plan
25 provided by a multiple employer welfare arrangement; or a plan
26 provided by another benefit arrangement, to the extent permitted by
27 the Employee Retirement Income Security Act of 1974, as amended,
28 or by any waiver of or other exception to that act provided under
29 federal law or regulation. "Health benefit plan" does not mean any
30 plan implemented or administered by the North Carolina or United
31 States Department of Health and Human Services, or any successor
32 agency, or its representatives. "Health benefit plan" does not mean any
33 of the following kinds of insurance:

- 34 a. ~~Accident.~~
35 b. ~~Credit.~~
36 c. ~~Disability income.~~
37 d. ~~Long-term or nursing home care.~~
38 e. ~~Medicare supplement.~~
39 f. ~~Specified disease.~~
40 g. ~~Dental or vision.~~
41 h. ~~Coverage issued as a supplement to liability insurance.~~
42 i. ~~Workers' compensation.~~
43 j. ~~Medical payments under automobile or homeowners.~~
44 k. ~~Hospital income or indemnity.~~

1 l. ~~Insurance under which benefits are payable with or without~~
2 ~~regard to fault and that is statutorily required to be contained in~~
3 ~~any liability policy or equivalent self insurance.~~

4 m. ~~Short term limited duration health insurance policies as defined~~
5 ~~in Part 144 of Title 45 of the Code of Federal Regulations.~~

6 plan consisting of one or more of any combination of benefits described in
7 G.S. 58-68-25(b)."

8 **SECTION 7.3.** G.S. 58-10-35(c) reads as rewritten:

9 "(c) After no fewer than 24 months after the mailing of the initial notice of
10 transfer required under G.S. 58-10-30, if positive consent to, or rejection of, the transfer
11 and assumption has not been received or consent has not been deemed to have occurred
12 under subsection (b) of this section, the transferring insurer shall send to the
13 policyholder a second and final notice of transfer as specified in G.S. 58-10-30. If the
14 policyholder does not accept or reject the transfer during the one-month period
15 immediately after the date on which the transferring insurer mailed the second and final
16 notice of transfer, the policyholder's consent and novation of the contract will occur.
17 With respect to the home service business, or any other business not using premium
18 notices, the 24-month and one-month periods shall be measured from the date of
19 delivery of the notice of transfer under G.S. 58-10-30."

20 **SECTION 7.4.** G.S. 58-56-51(a) reads as rewritten:

21 "(a) No person shall act as, offer to act as, or hold himself or herself out as a TPA
22 in this State without a valid TPA license issued by the Commissioner. Licenses shall be
23 renewed annually. Failure to submit a complete renewal application shall result in the
24 expiration of the license of the TPA as a matter of law; provided, however, the
25 Commissioner may grant the TPA an extension of time for good cause."

26 **SECTION 7.5.** G.S. 58-56-51(f) reads as rewritten:

27 "(f) A person is not required to be licensed as a TPA in this State if the person
28 provides services exclusively to one or more bona fide employee benefit plans each of
29 which is established by an employer, an employee organization, or both, and for which
30 the insurance laws of this State are preempted pursuant to the Employee Retirement
31 Income Security Act of 1974. Persons who are not required to be licensed shall register
32 with the Commissioner annually, verifying their status as described in this subsection.
33 Failure to submit an annual verification shall result in the expiration of the registration
34 of the TPA as a matter of law; provided, however, the Commissioner may grant the
35 TPA an extension of time for good cause."

36 **SECTION 7.6.** G.S. 58-58-135(1)c. is repealed.

37 **SECTION 7.7.** G.S. 58-58-205(12) reads as rewritten:

38 "(12) "Viatical settlement provider" or "provider" means a person, other than
39 a viator, that enters into or effectuates a viatical settlement ~~contract.~~
40 contract on residents of this State or residents of another state from
41 offices within this State. Viatical settlement provider— "Viatical
42 settlement provider" or "provider" does not include:

- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
- b. The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract;
- c. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- e. A financing entity;
- f. A special purpose entity;
- g. A related provider trust;
- h. A viatical settlement purchaser; or
- i. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider."

PART VIII. TEACHERS' AND STATE EMPLOYEES' MAJOR MEDICAL PLAN TECHNICAL CORRECTIONS.

SECTION 8.1. G.S. 58-2-161(a)(1)m. reads as rewritten:

"m. The Teachers' and State Employees' Comprehensive Major Medical Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

SECTION 8.2. G.S. 58-3-171(c) reads as rewritten:

"(c) For purposes of this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health maintenance organization (HMO) subscriber contracts and other plans provided by managed-care organizations; plans provided by a MEWA or plans provided by other benefit arrangements, to the extent permitted by ERISA; the Teachers' and State Employees' Comprehensive Major Medical Plan; Plan and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes; and medical payment coverages under homeowners and automobile insurance policies."

SECTION 8.3. G.S. 58-3-172(b) reads as rewritten:

"(b) For purposes of this section, "health benefit plans" means accident and health insurance policies or certificates; nonprofit hospital or medical service corporation contracts; health, hospital, or medical service corporation plan contracts; health maintenance organization (HMO) subscriber contracts and other plans provided by

1 managed-care organizations; plans provided by a MEWA or plans provided by other
2 benefit arrangements, to the extent permitted by ERISA; and the Teachers' and State
3 Employees' Comprehensive Major Medical Plan. Plan and any optional plans or
4 programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes."

5 **SECTION 8.4.** G.S. 58-3-175(a) reads as rewritten:

6 "(a) As used in this section, "health benefit plan" has the same meaning as in
7 G.S. 58-50-110(11) and includes the Teachers' and State Employees' Comprehensive
8 Major Medical Plan. Plan and any optional plans or programs operating under Part 2 of
9 Article 3 of Chapter 135 of the General Statutes."

10 **SECTION 8.5.** G.S. 58-50-75(b) reads as rewritten:

11 "(b) This Part applies to all insurers that offer a health benefit plan and that
12 provide or perform utilization review pursuant to G.S. 58-50-61, the Teachers' and State
13 Employees' Comprehensive Major Medical Plan, any optional plans or programs
14 operating under Part 2 of Article 3 of Chapter 135 of the General Statutes, and the
15 Health Insurance Program for Children. With respect to second-level grievance review
16 decisions, this Part applies only to second-level grievance review decisions involving
17 noncertification decisions."

18 **SECTION 8.6.** G.S. 58-51-115(a) reads as rewritten:

19 "(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

20 (1) "Health benefit plan" means any accident and health insurance policy
21 or certificate; a nonprofit hospital or medical service corporation
22 contract; a health maintenance organization subscriber contract; a plan
23 provided by a multiple employer welfare arrangement; the Teachers'
24 and State Employees' Comprehensive Major Medical Plan and any
25 optional plans or programs operating under Part 2 of Article 3 of
26 Chapter 135 of the General Statutes; or a plan provided by another
27 benefit arrangement. "Health benefit plan" does not mean a Medicare
28 supplement policy as defined in G.S. 58-54-1(5).

29 (2) "Health insurer" means any health insurance company subject to
30 Articles 1 through 63 of this Chapter, including a multiple employee
31 welfare arrangement, and any corporation subject to Articles 65 and 67
32 of this Chapter; a group health plan, as defined in section 607(1) of the
33 Employee Retirement Income Security Act of 1974; and the Teachers'
34 and State Employees' Comprehensive Major Medical Plan and any
35 optional plans or programs operating under Part 2 of Article 3 of
36 Chapter 135 of the General Statutes."

37 38 **PART IX. EFFECT OF HEADINGS.**

39 **SECTION 9.** The headings to the parts of this act are a convenience to the
40 reader and are for reference only. The headings do not expand, limit, or define the text
41 of this act.

42 43 **PART X. EFFECTIVE DATES.**

1 **SECTION 10.** Part I of this act becomes effective January 1, 2008, and
2 applies to violations occurring on or after that date. Sections 7.4 and 7.5 apply to
3 renewal applications submitted on or after October 1, 2007. Section 10 and Parts II, III,
4 V, and VIII are effective when the bill becomes law. The remainder of the act becomes
5 effective October 1, 2007, and applies to policies issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 735*

Committee Substitute Favorable 3/27/07

Short Title: Limit Use/State Property Fire Insurance Fund.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO DENY STATE PROPERTY FIRE INSURANCE FUND COVERAGE
FOR LOSSES INCURRED BY STATE AGENCIES THAT HAVE NOT
SUBMITTED BUILDING CONSTRUCTION PLANS TO THE COMMISSIONER
OF INSURANCE FOR APPROVAL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-31-40(b) reads as rewritten:

"(b) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising 10,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. There shall be no transfer of money from the State Property Fire Insurance Fund pursuant to G.S. 58-31-10 for total or partial loss to any building if the plan for that building was not submitted to the Commissioner for approval under this section."

SECTION 2. This act becomes effective July 1, 2007, and applies to the construction or renovation of all State buildings on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 735*
Committee Substitute Favorable 3/27/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H735-CSR-56 [v.1]

7/10/2007 9:38:14 AM

Short Title: Construction Plan Review.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO STREAMLINE THE CONSTRUCTION PLAN REVIEW PROCESS
FOR CERTAIN PUBLIC BUILDINGS, AS REQUESTED BY THE HOUSE
SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-31-40(b) reads as rewritten:

"(b) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising ~~10,000~~ 20,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents."

SECTION 2. This act becomes effective October 1, 2007, and applies to plans submitted to the Commissioner for approval on or after that date as to the safety of any proposed county, city, or school district building comprising 20,000 square feet or more from fire including the property's occupants or contents.



HOUSE BILL 735: Construction Plan Review.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 10, 2007
Introduced by:	Reps. Goforth, Dockham	Summary by:	Tim Hovis
Version:	PCS to Second Edition H735-CSR-56		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 735 would provide that plans to erect county, city, or school district buildings of 20,000 square feet or more (was 10,000 square feet) must be approved by the Commissioner for fire safety.*

As introduced, this bill is identical to S971, as introduced by Sen. Cowell, which is currently in Senate Commerce, Small Business and Entrepreneurship.

CURRENT LAW: G.S. 58-31-40(b) provides also that no agency or other person authorized to approve a plan and erect a building for the State's use shall approve the plan until it is submitted to and approved by the Commissioner as to the safety of the building from fire. This requirement also applies to county, city, or school district buildings of 10,000 or more square feet.

EFFECTIVE DATE: House Bill 735 becomes effective October 1, 2007 and applies to the construction or renovation of State buildings on or after that date and to plans submitted for the Commissioner's approval on or after that date with regard to county, city, or school district buildings of 20,000 square feet or more.

BACKGROUND: The State Property Fire Insurance Fund was created in 1945 to serve as a special Fund in the State treasury for the purpose of providing a reserve against loss from fire at State departments and institutions. The State Treasurer is the custodian of the Fund. The Commissioner of Insurance determines the amount of loss and certifies the amount of loss to the institution or agency and to the Director of the Budget and the Council of State. The Director and the Council of State authorize transfers from the Fund to the agency or institution in amounts necessary to pay for the actual cost of restoration or replacement.

H0735e2-SMRG-CSR-56

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 735*

Committee Substitute Favorable 3/27/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H735-PCS10258-RG-56

Short Title: Construction Plan Review.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO STREAMLINE THE CONSTRUCTION PLAN REVIEW PROCESS
FOR CERTAIN PUBLIC BUILDINGS, AS REQUESTED BY THE HOUSE
SELECT COMMITTEE ON PUBLIC SCHOOL CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-31-40(b) reads as rewritten:

"(b) No agency or other person authorized or directed by law to select a plan and erect a building for the use of the State or any State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising ~~40,000~~ 20,000 square feet or more for the use of any county, city, or school district shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents."

SECTION 2. This act becomes effective October 1, 2007, and applies to plans submitted to the Commissioner for approval on or after that date as to the safety of any proposed county, city, or school district building comprising 20,000 square feet or more from fire including the property's occupants or contents.

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/10/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE

ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Susanm Jelen	NCKUT
TEO Harby	NC Dept of Ins.
DAVID STOLLER	STATE FARM
Joe Stewart	IFNC
Sharon Janyin	BMAC Insurance
Chris Valauri	N.C. Reef Wine Wholesalers
Robert FASCH	Young, Moore
Cliff Venble	Govs office
John Madry	Gov office
Elizabeth Dalton	NCRMA
Bill Swobbin	Kel

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/10/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME

FIRM OR AGENCY AND ADDRESS

DAVID ROTHMAN

KENNEDY CONVENTION

Russ Dubisky

IFNC

[Signature]

RANC

VL McBride

72077

REV. MARY SKECH

CAZ

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/10/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Dennis Patterson	OSC
Judy Chriscow	LA - Sen. Bingham
Henry Huters	N.C.B.A.
Alastair Macaulay	NCHBA
Marc Finlayson	Finlayson Consulting, LLC
Nathan Batts	NCBA
Wayne Goodwin	NCDOI
Jim Levy	NCOCI
Penny Hiff	Daily Bulletin
Jim Blackburn	NC Association of County Commissioners
Alice Garland	NCEL

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/10/07
Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Benjamin Ruyters	NCFPC
John R. A.	NCFPC
Dean Pluh	NCRBWA
Greg Thompson	NFIB
Frank Gray	NCRLA
Sal Sando	WCSPR
Rose Williams	DOI
Sam Igba	MWC

Senate Commerce, Small Business and Entrepreneurship Committee
Thursday, July 12, 2007, 9:00 AM
1027, LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 129	Penalties for Insurance Rate Evasion Fraud.-AB	Representative Goforth Representative Holliman
HB 1402	Welcome Center Construction.	Representative Warren Representative McAllister Representative Harrison Representative Wilkins, Jr.

Other Business

Adjournment

**SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP
COMMITTEE**

**Thursday, July 12, 2007 at 11:00 a.m.
Room 1027, Legislative Building**

MINUTES


The Senate Commerce, Small Business and Entrepreneurship Committee met at 11:00 a.m. on July 12, 2007, in Room 1027 of the Legislative Building. Fourteen members of the committee were present. Senator R. C. Soles, Jr., Chair of the Committee, presided.

Senator Soles introduced the pages who were assisting in the meeting: Lucy Brown Spencer and Mary Rebecca Garajas of Gaston County, sponsored by Senator David Hoyle; Kathryn Daniel of Caswell County, sponsored by Senator Tony Foriest; and Hannah Leonard of Columbus County, sponsored by Senator Soles.

Senator Soles recognized Representative Winkie Wilkins to present HB 1402, Welcome/Visitors Center Construction. Senator Tom Apodaca moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Senator Apodaca moved an unfavorable report of the bill, but favorable as to the committee substitute. Senator Weinstein answered some questions from committee members. The motion carried.

Senator Soles recognized Representative Bruce Goforth to present HB 729, Penalties for Insurance Rate Evasion Fraud.-AB. Senator Harris Blake moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Ms. Rose Vaughn Williams, Counsel to the Department of Insurance, was introduced to explain the committee substitute. Senator Jim Forrester asked if a fiscal note had been prepared. Mr. Tim Hovis, Counsel, read the part of the fiscal note that described the fiscal impact. Senator Apodaca sent forth Amendment #1 and moved its adoption. Copies were passed out to members. The motion carried. Senator Apodaca sent forth Amendment #2 and moved its adoption. Senator Soles read the amendment. The motion carried. Senator Apodaca sent forth Amendment #3 and moved its adoption. Senator Soles read the amendment. The motion carried. Senator Apodaca sent forth Amendment #4 and moved its adoption. Senator Soles read the amendment. The motion carried. Senator John Kerr sent forth Amendment #5 and moved its adoption. Mr. Robert Pascal, representing State Farm Insurance, read the amendment. The motion carried. Senator Forrester asked for another fiscal note to be prepared. Senator Nesbitt asked to have an amendment prepared to lower the crime from a Class H felony to a Class 3 misdemeanor. Senator Soles requested staff to prepare a new proposed committee substitute incorporating all the amendments including Senator Nesbitt's request for the committee to look at prior to taking a vote on the bill at the following meeting.

The meeting adjourned at 11:30 a.m.


Senator R. C. Soles, Jr., Chair, Presiding


Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Monday, July 16, 2007

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

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

H.B.	1402	Welcome Center Construction.	
		Draft Number:	PCS 70583
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

1

HOUSE BILL 1402

Short Title: Welcome Center Construction.

(Public)

Sponsors: Representatives Wilkins, McAllister, Harrison, E. Warren (Primary Sponsors); Langdon, Wainwright, and Wray.

Referred to: Commerce, Small Business and Entrepreneurship, if favorable, Transportation.

April 12, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS BEFORE BEGINNING THE DESIGN OR CONSTRUCTION OF NEW WELCOME CENTER BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Commerce and the Department of Transportation shall consult with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources before beginning the design or construction of any new welcome center buildings.

SECTION 2. The Department of Commerce and the Department of Transportation shall immediately cease the planning, design, or construction of any new welcome center buildings in Randolph County and shall not resume the planning, design, or construction of any new welcome center buildings in that county before consulting with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources.

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 1402
PROPOSED SENATE COMMITTEE SUBSTITUTE H1402-CSSU-62 [v.1]

7/11/2007 1:31:51 PM

Short Title: Welcome/Visitors Center Construction.

(Public)

Sponsors:

Referred to:

April 12, 2007

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING THE DEPARTMENT OF COMMERCE AND THE
3 DEPARTMENT OF TRANSPORTATION TO CONSULT WITH THE JOINT
4 LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS BEFORE
5 BEGINNING THE DESIGN OR CONSTRUCTION OF NEW WELCOME
6 CENTER OR VISITORS CENTER BUILDINGS AND CLARIFYING THAT THE
7 DEPARTMENT OF TRANSPORTATION MAY PROCEED WITH THE
8 CONSTRUCTION OF VISITORS CENTER BUILDINGS UNDERWAY IN
9 RANDOLPH AND WILKES COUNTIES.

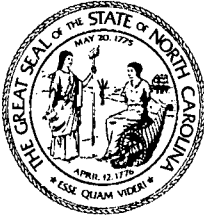
10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** The Department of Commerce and the Department of
12 Transportation shall consult with the Joint Legislative Commission on Governmental
13 Operations and the House and Senate Appropriations Subcommittees on Natural and
14 Economic Resources before beginning the design or construction of any new welcome
15 center or visitors center buildings.

16 **SECTION 2.** The Department of Commerce and the Department of
17 Transportation shall immediately cease the planning, design, or construction of any new
18 welcome center buildings in Randolph County and shall not resume the planning,
19 design, or construction of any new welcome center buildings in that county before
20 consulting with the Joint Legislative Commission on Governmental Operations and the
21 House and Senate Appropriations Subcommittees on Natural and Economic Resources.

22 **SECTION 3.** Nothing in this act shall be interpreted to prohibit or restrict
23 the Department of Transportation from constructing visitors center buildings in
24 Randolph County and Wilkes County that were in the planning, design, or construction
25 phase prior to the effective date of this act. The Department of Commerce shall operate
26 the Randolph County visitors center.

27 **SECTION 4.** This act is effective when it becomes law.
28



HOUSE BILL 1402: Welcome/Visitors Center Construction

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 12, 2007
Introduced by:	Reps. Wilkins, McAllister, Harrison, E. Warren	Summary by:	Wendy Graf Ray Committee Counsel
Version:	PCS to First Edition H1402-CSSU-62		

SUMMARY: *The PCS for House Bill 1402 would require consultation with the General Assembly before any State welcome center or visitors center is constructed, and it would stop work on the Randolph County welcome center pending consultation with the General Assembly.*

BILL ANALYSIS: The PCS for House Bill 1402 would do the following three things:

- Direct the Department of Commerce and the Department of Transportation to consult with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources before beginning the design or construction of any new welcome center or visitors center buildings.
- Direct the Department of Commerce and the Department of Transportation to immediately cease the planning, design, or construction of any new welcome center buildings in Randolph County and not resume the planning, design, or construction of any new welcome center buildings in that county before consulting with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources.
- Clarify that the act would not prohibit the Department of Transportation from constructing visitors center buildings in Randolph and Wilkes Counties that are already underway.

EFFECTIVE DATE: This act would be effective when it becomes law

H1402e1-SMSU-CSSU-62

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 1402

PROPOSED SENATE COMMITTEE SUBSTITUTE H1402-PCS70583-SU-62

Short Title: Welcome/Visitor Center Construction.

(Public)

Sponsors:

Referred to:

April 12, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF TRANSPORTATION TO CONSULT WITH THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS BEFORE BEGINNING THE DESIGN OR CONSTRUCTION OF NEW WELCOME CENTER OR VISITOR CENTER BUILDINGS AND CLARIFYING THAT THE DEPARTMENT OF TRANSPORTATION MAY PROCEED WITH THE CONSTRUCTION OF VISITOR CENTER BUILDINGS UNDERWAY IN RANDOLPH AND WILKES COUNTIES.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Commerce and the Department of Transportation shall consult with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources before beginning the design or construction of any new welcome center or visitor center buildings.

SECTION 2. The Department of Commerce and the Department of Transportation shall immediately cease the planning, design, or construction of any new welcome center buildings in Randolph County and shall not resume the planning, design, or construction of any new welcome center buildings in that county before consulting with the Joint Legislative Commission on Governmental Operations and the House and Senate Appropriations Subcommittees on Natural and Economic Resources.

SECTION 3. Nothing in this act shall be interpreted to prohibit or restrict the Department of Transportation from constructing visitor center buildings in Randolph County and Wilkes County that were in the planning, design, or construction phase prior to the effective date of this act. The Department of Commerce shall operate the Randolph County visitor center with funding sources consistent with the existing nine welcome centers, excluding use of funds from the Special Registration Plate Account and the Highway Fund.

1

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 729*
Committee Substitute Favorable 5/17/07

Short Title: Penalties for Insurance Rate Evasion Fraud.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE
INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY
THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-36-120. Rate evasion fraud; prevention programs.

(a) The following definitions apply in this section:

(1) Applicant. – One or more persons applying for the issuance of an auto insurance policy.

(2) Auto insurance. – Nonfleet private passenger motor vehicle insurance.

(3) Eligible applicant. – A person who is any of the following:

a. A resident of this State who owns a motor vehicle registered and principally garaged in this State.

b. A resident of this State who has a valid North Carolina drivers license or who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register a motor vehicle or obtain a drivers license in this State.

c. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State.

d. The State and its agencies and cities and counties in this State and their agencies.

(4) Insurer. – A member of the Bureau that is licensed to write and is writing auto insurance in this State.

(b) A person is not an eligible applicant, as defined in subdivision (a)(3) of this section, if the person has not tendered timely payment of premium; if there is a valid

1 unsatisfied judgment of record against that person for recovery of amounts due for
2 motor vehicle insurance premiums and that person has not been discharged from paying
3 the judgment; or if that person does not furnish the information necessary to effect
4 insurance.

5 (c) It shall be a Class H felony for any person, who with the intent to deceive an
6 insurer, to do any of the following:

7 (1) Present or cause to be presented a written or oral statement in support
8 of an application for auto insurance, knowing that the application
9 contains false or misleading information that states the applicant is an
10 eligible applicant when the applicant is not an eligible applicant.

11 (2) Assist, abet, solicit, or conspire with another person to prepare or make
12 any written or oral statement that is intended to be presented to an
13 insurer in connection with or in support of an application for auto
14 insurance, if the person knows that the statement contains false or
15 misleading information that states the applicant is an eligible applicant
16 when the applicant is not an eligible applicant.

17 (d) In order to prevent persons who are not eligible applicants from purchasing
18 auto insurance in this State, an agent shall require every applicant for insurance to sign a
19 statement that includes all of the following attestations:

20 (1) The applicant and all named insureds to be insured on the policy for
21 which application is made are eligible applicants.

22 (2) All of the information provided by the applicant is true and correct.

23 (3) The applicant understands that providing fraudulent information as to
24 the applicant's or any named insured's status as an eligible applicant
25 may result in criminal prosecution and the denial of coverage under the
26 policy for which application is made for any bodily injury or property
27 damage suffered by the applicant.

28 (e) The statement required under subsection (d) of this section may be made:

29 (1) Orally if application for an auto insurance policy is made by way of
30 telephone and the applicant's answers are recorded in writing by the
31 agent; or

32 (2) Electronically if application for an auto insurance policy is made by
33 way of the Internet.

34 (f) The insurer and its agent shall also take reasonable steps to verify that the
35 information provided by an applicant regarding the applicant's address and the place the
36 motor vehicle is garaged is correct. The agent shall retain copies of any items obtained
37 under this section as required under the record retention rules adopted by the
38 Commissioner.

39 (g) Every insurer shall audit its auto insurance business at least annually for
40 misrepresentations by applicants regarding their addresses and the places their motor
41 vehicles are garaged. A copy of the audit shall be provided to the Commissioner upon
42 request.

43 (h) If an applicant provides fraudulent information as to the applicant's or any
44 named insured's status as an eligible applicant and that fraudulent information makes

1 the applicant or any named insured appear to be an eligible applicant when that person
2 is in fact not an eligible applicant, the insurer may do any or all of the following:

- 3 (1) Refuse to issue a policy.
- 4 (2) Cancel or refuse to renew a policy that has been issued.
- 5 (3) Deny coverage for any bodily injury or property damage suffered by
6 the applicant. This subdivision does not apply to innocent third
7 parties."

8 **SECTION 2.** G.S. 58-2-163 reads as rewritten:

9 **"§ 58-2-163. Report to Commissioner.**

10 Whenever any insurance company, or employee or representative of such company,
11 or any other person licensed or registered under Articles 1 through 67 of this Chapter
12 knows or has reasonable cause to believe that any other person has violated
13 G.S. 58-2-161, 58-2-162, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), 58-36-120, or whenever
14 any insurance company, or employee or representative of such company, or any other
15 person licensed or registered under Articles 1 through 67 of this Chapter knows or has
16 reasonable cause to believe that any entity licensed by the Commissioner is financially
17 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the
18 Commissioner and provide the Commissioner with a complete statement of all of the
19 relevant facts and circumstances. Such report is a privileged communication, and when
20 made without actual malice does not subject the person making the same to any liability
21 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of
22 any licensee who willfully fails to comply with this section."

23 **SECTION 3.** The Joint Legislative Transportation Oversight Committee
24 may study the issues related to automobile insurance rate evasion (S.B. 795 –
25 Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended
26 legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

27 **SECTION 4.** Sections 1 and 2 of this act become effective January 1, 2008,
28 and apply to applications for nonfleet private passenger motor vehicle insurance made
29 on and after that date. This remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 729*
Committee Substitute Favorable 5/17/07
PROPOSED COMMITTEE SUBSTITUTE H729-CSR-51 [v.12]

7/11/2007 7:08:37 PM

Short Title: Penalties for Insurance Rate Evasion Fraud.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE
INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY
THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-1 reads as rewritten:

"§ 58-37-1. Definitions.

As used in this Article:

- (1) "Cede" or "cession" means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility.
- (2) Repealed by Session Laws 1991, c. 720, s. 6.
- (3) "Company" means each member of the Facility.
- (4) "Eligible risk" ~~"risk,"~~ for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance, means a ~~person who~~ person:
 - a. Who is a resident of this State who owns a motor vehicle registered or principally garaged in this State ~~or who~~ State;
 - b. Who has a valid driver's license in this State ~~or who~~ State;
 - c. Who is required to file proof of financial responsibility pursuant to under Article 9A or 13 of the North Carolina Motor Vehicle Code Chapter 20 of the General Statutes in order to register his or her motor vehicle or to obtain a driver's license in this State; ~~or~~
 - d. ~~a~~ A nonresident of this State who owns a motor vehicle registered or principally garaged in this State ~~or the~~ State; or

e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided however, that agencies.

However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

(4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance means a person:

a. Who is a resident of this State who owns a motor vehicle registered or principally garaged in this State;

b. Who has a valid driver's license in this State;

c. Who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver's license in this State;

d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;

e. A nonresident of the State who is one of the following:

1. A member of the United States Armed Forces stationed in this State who intends to return to his or her home state;

2. The spouse of a nonresident member of the United States Armed Forces stationed in this State who intends to return to his or her home state;

3. An out-of-state college student who intends to return to his or her home state upon completion of their time as a student enrolled in school in this State; or

f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk if timely payment or premium is not tendered or if there is a valid unsatisfied judgment of record against the person for recovery of amounts due for motor vehicle insurance premiums and the person has not been discharged from paying the judgment, or if the person does not furnish the information necessary to effect insurance.

(5) "Facility" means the North Carolina Motor Vehicle Reinsurance Facility established pursuant to the provisions of under this Article.

(6) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers). "Motor vehicle" also means a motorcycle, as defined in G.S. 20-4.01(27)d.

(7) "Motor vehicle insurance" means direct insurance against liability arising out of the ownership, operation, maintenance or use of a motor vehicle for bodily injury including death and property damage and includes medical payments and uninsured and underinsured motorist coverages.

With respect to motor carriers who are subject to the financial responsibility requirements established under the Motor Carrier Act of 1980, the term, "motor vehicle insurance" includes coverage with respect to environmental restoration. As used in this subsection the term, "environmental restoration" means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release, or escape into or upon the land, atmosphere, water course, or body of water of any commodity transported by a motor carrier. Environmental restoration includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

(8) "Person" means every natural person, firm, partnership, association, trust, limited liability company, firm, corporation, government, or governmental agency.

(9) "Plan of operation" means the plan of operation approved pursuant to the provisions of this Article.

(10) Repealed by Session Laws 1977, c. 828, s. 10.

(11) "Principally garaged" means the vehicle is garaged for six or more months of the current or preceding year on property in this State which is owned, leased, or otherwise lawfully occupied by the owner of the vehicle."

SECTION 2. G.S. 58-37-50 reads as rewritten:

"§ 58-37-50. Termination of insurance.

No member may terminate insurance to the extent that cession of a particular type of coverage and limits is available under the provisions of this Article except for the following reasons:

(1) Nonpayment of premium when due to the insurer or producing agent.

(2) The named insured has become a nonresident of this State and would not otherwise be entitled to insurance on submission of new application under this Article.

(3) A member company has terminated an agency contract for reasons other than the quality of the agent's insureds or the agent has terminated the contract and such agent represented the company in taking the original application for insurance.

(4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.

(5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.

(6) The named insured is no longer an eligible risk under G.S. 58-37-1."

SECTION 3. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-164. Rate evasion fraud; prevention programs.

(a) The following definitions apply in this section:

(1) "Applicant" means one or more persons applying for the issuance of an auto insurance policy.

(2) "Auto insurance" means nonfleet private passenger motor vehicle insurance.

(3) "Eligible applicant" means a person who is an eligible risk under G.S. 58-37-1(4a).

(4) "Insurer" means a member of the North Carolina Rate Bureau that is licensed to write and is writing auto insurance in this State.

(5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).

(6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S. 58-40-10(1).

(b) It shall be a Class H felony for any person, who with the intent to deceive an insurer, to do any of the following:

(1) Present or cause to be presented a written or oral statement in support of an application for auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

(2) Assist, abet, solicit, or conspire with another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining reliable proof of North Carolina residency from the applicant. Reliable proof of residency includes but is not limited to:

(1) A pay stub with the payee's address.

- (2) A utility bill showing the address of the applicant-payor.
 - (3) A lease for an apartment, house, modular unit, or manufactured home with a North Carolina address signed by the applicant.
 - (4) A receipt for personal property taxes paid.
 - (5) A receipt for real property taxes paid to a North Carolina locality.
 - (6) A monthly or quarterly financial statement from a North Carolina regulated financial institution.
 - (7) A valid unexpired North Carolina driver's license
 - (8) A matricula consular or substantially similar document issued by the Mexican Consulate for North Carolina.
 - (9) A document similar to that described in subdivision (8) of this section, issued by the consulate or embassy of another country that would be accepted by the North Carolina Division of Motor Vehicles as set forth in G.S. 20-7(b4)(9).
 - (10) A valid North Carolina vehicle registration
 - (11) A valid Military ID
 - (12) A valid student ID for a North Carolina school or university.
- (d) In the absence of actual malice, neither an insurer, the authorized representative of the insurer, a producer, the Commissioner, an organization of which the Commissioner is a member, nor the respective employees and agents of such persons acting on behalf of such persons shall be subject to civil liability as a result of any statement or information provided pursuant to this section.
- (e) In any action brought against a person that may have immunity under subsection (d) of this section for making any statement required by this section or for providing any information relating to any statement that may be requested by the Commissioner, the party bringing the action shall plead specifically in any allegation that subsection (d) of this section does not apply because the person making the statement or providing the information did so with actual malice. Subsections (d) and (e) of this section do not abrogate or modify any existing statutory or common law privileges or immunities.
- (f) Every insurer shall review its auto insurance business at least annually for misrepresentations by applicants regarding their addresses and the places their motor vehicles are garaged. A copy of the review, if any, shall be provided to the Commissioner upon request.
- (g) If an applicant provides fraudulent information as to the applicant's or any named insured's status as an eligible applicant and that fraudulent information makes the applicant or any named insured appear to be an eligible applicant when that person is in fact not an eligible applicant, the insurer may do any or all of the following:
- (1) Refuse to issue a policy.
 - (2) Cancel or refuse to renew a policy that has been issued.
 - (3) Deny coverage for any bodily injury or property damage suffered by the applicant. This subdivision does not apply to innocent third parties.
- (h) In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into

1 evidence against the defendant and shall establish the liability of the defendant as a
2 matter of law for such damages, fees or costs as may proven. The court may award the
3 prevailing party compensatory damages including but not limited to any costs, losses,
4 expenses, and attorney fees incurred in connection with any false statement of eligible
5 risk status made in an application for insurance or incurred in connection with any claim
6 submitted under a policy obtained as a result of a false statement of status as an eligible
7 risk, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can
8 demonstrate that the defendant has engaged in a pattern of violations of this section, the
9 court may award treble damages."

10 **SECTION 4.** G.S. 58-2-163 reads as rewritten:

11 **"§ 58-2-163. Report to Commissioner.**

12 Whenever any insurance company, or employee or representative of such company,
13 or any other person licensed or registered under Articles 1 through 67 of this Chapter
14 knows or has reasonable cause to believe that any other person has violated
15 G.S. 58-2-161, 58-2-162, 58-2-164, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), or whenever any
16 insurance company, or employee or representative of such company, or any other
17 person licensed or registered under Articles 1 through 67 of this Chapter knows or has
18 reasonable cause to believe that any entity licensed by the Commissioner is financially
19 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the
20 Commissioner and provide the Commissioner with a complete statement of all of the
21 relevant facts and circumstances. Such report is a privileged communication, and when
22 made without actual malice does not subject the person making the same to any liability
23 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of
24 any licensee who willfully fails to comply with this section."

25 **SECTION 5.** The Joint Legislative Transportation Oversight Committee
26 may study the issues related to automobile insurance rate evasion (S.B. 795 –
27 Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended
28 legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

29 **SECTION 6.** G.S. 20-52(a) reads as rewritten:

30 "(a) An owner of a vehicle subject to registration must apply to the Division for a
31 certificate of title, a registration plate, and a registration card for the vehicle. To apply,
32 an owner must complete an application ~~form~~ provided by the Division. The application
33 ~~form~~ must request all of the following information and may request other information
34 the Division considers necessary:

35 (1) The owner's name.

36 (1a) If the owner is an individual, the following information:

37 a. The owner's mailing address and residence address.

38 b. The owner's North Carolina drivers license number or North
39 Carolina special identification card number.

40 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
41 the address of the entity.

42 (2) A description of the vehicle, including the following:

43 a. The make, model, type of body, and vehicle identification
44 number of the vehicle.

b. Whether the vehicle is new or used and, if a new vehicle, the date the manufacturer or dealer sold the vehicle to the owner and the date the manufacturer or dealer delivered the vehicle to the owner.

(3) A statement of the owner's title and of all liens upon the vehicle, including the names and addresses of all lienholders in the order of their priority, and the date and nature of each lien.

(4) A statement that the owner is an eligible risk for insurance coverage as defined in G.S. 58-37-1.

(5) For registration and certificate of title for a nonfleet private passenger motor vehicle, a statement that the owner understands that providing incorrect or fraudulent information as to the owner's status as an eligible risk can result in criminal prosecution as a felony and the denial of insurance coverage for any loss of the owner under any insurance policies for which application is made, if the owner falsely claims eligible risk status.

(6) For registration and certificate of title for a nonfleet private passenger motor vehicle, a statement that the owner will inform the insurer before the next policy renewal if the owner ceases to be an eligible risk.

The application form must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division may disclose a social security number obtained under this subsection only for the purpose of administering the motor vehicle registration laws and may not disclose the social security number for any other purpose. The social security number of a person who applies to register a vehicle or of a person in whose name a vehicle is registered is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 405(c)(2)(C)(vii)."

SECTION 7. If House Bill 1350, 2007 Regular Session, becomes law, Section 6 of this act is repealed and, effective January 1, 2008, G.S. 20-52(a) as amended by Section 2 of House Bill 1350 reads as rewritten:

"(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application ~~form~~ provided by the Division. The application ~~form~~ must request all of the following information and may request other information the Division considers necessary:

(1) The owner's name.

(1a) If the owner is an individual, the following information:

a. The owner's mailing address and residence address.

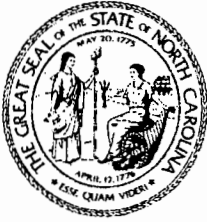
b. One of the following:

1. The owner's North Carolina drivers license number or North Carolina special identification card number.

- 1 2. The owner's home state drivers license number or home state
2 special identification card number and valid active duty military
3 identification card if the owner is a person on active military
4 duty and is stationed in this State.
- 5 3. The owner's home state drivers license number or home state
6 special identification card number and proof of enrollment in a
7 school in this State if the owner is a permanent resident of
8 another state but is currently enrolled in a school in this State.
- 9 4. The owner's home state drivers license number or home state
10 special identification card number if the owner or co-owner
11 intends to principally garage the vehicle in this State.
12 "Principally garage" means the vehicle is garaged for six or
13 more months of the year on property in this State which is
14 owned, leased, or otherwise lawfully occupied by the owner of
15 the vehicle.
- 16 c. For vehicles that have more than one owner, only one co-owner
17 is required to provide the information requested under sub-
18 subdivision b. of this subdivision.
- 19 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
20 the address of the entity.
- 21 (2) A description of the vehicle, including the following:
22 a. The make, model, type of body, and vehicle identification
23 number of the vehicle.
- 24 b. Whether the vehicle is new or used and, if a new vehicle, the
25 date the manufacturer or dealer sold the vehicle to the owner
26 and the date the manufacturer or dealer delivered the vehicle to
27 the owner.
- 28 (3) A statement of the owner's title and of all liens upon the vehicle,
29 including the names and addresses of all lienholders in the order of
30 their priority, and the date and nature of each lien.
- 31 (4) A statement that the owner is an eligible risk for insurance coverage as
32 defined in G.S. 58-37-1.
- 33 (5) For registration and certificate of title for a nonfleet private passenger
34 motor vehicle, a statement that the owner understands that providing
35 incorrect or fraudulent information as to the owner's status as an
36 eligible risk can result in criminal prosecution as a felony and the
37 denial of insurance coverage for any loss of the owner under any
38 insurance policies for which application is made, if the owner falsely
39 claims eligible risk status.
- 40 (6) For registration and certificate of title for a nonfleet private passenger
41 motor vehicle, a statement that the owner will inform the insurer
42 before the next policy renewal if the owner ceases to be an eligible
43 risk.
- 44

1 The application form must contain the disclosures concerning the request for an
2 applicant's social security number required by section 7 of the federal Privacy Act of
3 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
4 may disclose a social security number obtained under this subsection only for the
5 purpose of administering the motor vehicle registration laws and may not disclose the
6 social security number for any other purpose. The social security number of a person
7 who applies to register a vehicle or of a person in whose name a vehicle is registered is
8 therefore not a public record. A violation of the disclosure restrictions is punishable as
9 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

10 **SECTION 8.** Sections 1, 2, 3, 4, 6 and 7 of this act become effective January
11 1, 2008. Sections 1 and 2 apply to motor vehicle insurance policies issued or renewed
12 on or after that date. Sections 3 and 4 apply to applications for nonfleet private
13 passenger motor vehicle insurance made on and after that date. Sections 6 and 7 of this
14 act applies to applications for registration and certificate of title made on or after that date.
15 The remainder of this act is effective when it becomes law.



HOUSE BILL 729: Penalties for Insurance Rate Evasion Fraud.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 11, 2007
Introduced by:	Reps. Goforth, Holliman	Summary by:	Tim Hovis
Version:	PCS to Second Edition H729-CSRG-51[v.12]		Committee Counsel

SUMMARY: *House Bill 729 makes it a Class H felony for an applicant for auto insurance to intentionally deceive the insurer by misrepresenting whether the applicant is eligible to be insured in North Carolina, or if the person assists, solicits, or conspires with another to fraudulently obtain auto insurance. It would also require insurers to take reasonable steps to verify that the information provided by the applicant is correct as to the applicant's address or the address where the applicant's automobile is principally garaged. If an applicant provides fraudulent information as to his or her status, the insurer may refuse to issue a policy, cancel or refuse to renew a policy, or deny coverage for any bodily injury or property damage. The Proposed Committee Substitute would place an obligation upon insurers and their employees, as well as all persons licensed under Chapter 58 to notify the Commissioner of Insurance of any violations of these requirements.*

The bill gives authority to the Joint Legislative Transportation Oversight Committee to study issues related to automobile insurance rate evasion and report its findings and any recommended legislation to the 2008 Regular Session of the 2007 General Assembly.

BILL ANALYSIS: To obtain motor vehicle insurance in this State, the owner of a vehicle must qualify as an "eligible risk." **Section 1** of the bill would amend the definition of "eligible risk" to include, for the purposes of obtaining nonfleet private passenger motor vehicle insurance, nonresidents who own a motor vehicle registered and principally garaged in this State. Eligible risk would also include nonresident members of the United States Armed Forces stationed in this State, and out-of-state college students enrolled in school in this State.

This section also includes a definition of "principally garaged" to mean a vehicle garaged for six or months of the current or preceding year in this State on property lawfully occupied by the owner of the vehicle. There is currently no definition of principally garaged in the statutes.

Section 2 authorizes an insurer to terminate insurance of the named insured is no longer an eligible risk.

Section 3 creates a new statute in Article 2 of Chapter 58 of the General Statutes to makes it a Class H felony for an applicant for auto insurance to intentionally deceive an insurer by misrepresenting whether the applicant is an eligible risk to be insured in North Carolina, or if the person assists, solicits, or conspires with another to fraudulently obtain auto insurance by making false statements or providing misleading information as to an applicant's status as an eligible risk. The bill would require insurers to take reasonable steps to verify that the information provided by the applicant is correct as to the applicant's address or the address where the applicant's automobile is principally garaged. A list of items showing proof of residency is provided in this section.

In the absence of actual malice, an insurer and its authorized representative, producers, the Commissioner, and the respective agents and employees of these persons is not subject to civil liability as a result of any statement provided under this section.

House Bill 729

Page 2

This section would also require insurers to annually review its records for misrepresentations by applicants as to this information.

If an applicant provides fraudulent information as to the applicant's status, the insurer may refuse to issue a policy, cancel or refuse to renew a policy, or deny coverage for any bodily injury or property damage. A defendant convicted under this section is subject to civil suit for compensatory damages, including treble damages if a pattern of violations is shown.

Section 4 requires insurers and their employees or representative and any other person licensed under Chapter 58 to notify the Commissioner of Insurance of any violations of these requirements.

Section 5 gives authority to the Joint Legislative Transportation Oversight Committee to study issues related to automobile insurance rate evasion and report its findings and any recommended legislation to the 2008 Regular Session of the 2007 General Assembly.

Sections 6 and 7 amend the current law governing vehicle registration and certificates of title to require applicant's to include certain statements on their application verifying that the applicant is an eligible risk, understands the consequences of providing incorrect or fraudulent information, and will inform an his or her insurer before the next policy renewal if the owner ceases to be an eligible risk. (This language is set out twice to address possible changes to the statute made by other legislation which is ratified but not yet signed by the Governor.)

EFFECTIVE DATE: Sections 1, 2, 3, 4, 6, and 7 become effective January 1, 2008. Sections 1 and 2 apply to policies issued or renewed on or after that date. Sections 3 and 4 apply to applications for nonfleet motor vehicle insurance made on or after that date. Section 6 and 7 apply to applications for registration and certificate of title made on or after that date. The remainder of the act is effective when it becomes law.

H0729c2-SMRG-CSRG-51v12



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 729*

H729-ARG-25 [v.1]

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

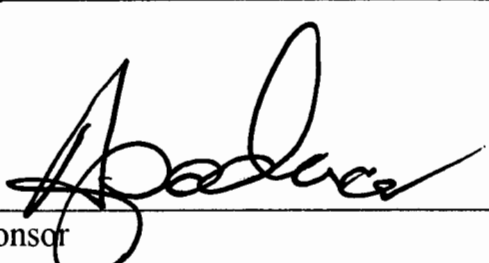
Page 1 of 1

Date 7/12, 2007

Comm. Sub. [YES]
Amends Title [NO]
H729-CSR-51[v.12]

Senator _____

- 1 moves to amend the bill on page 2, line 14, by rewriting the line to read: issued by
2 "b. Who is a resident of this State and who has a valid driver's license in this
3 State";
4
5 and on page 2, line 26, by deleting the word "college";
6
7 and on page 4, line 43, by rewriting the line to read:
8 "from the applicant or of the applicant's status as an eligible risk. Reliable proof of
9 residency or eligible risk status includes but is not limited to:".
10

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. 729

DATE 7/12/07

S. B. No. _____

Amendment No. 2

COMMITTEE SUBSTITUTE H729-CSR6-51 [v.12]

(to be filled in by
Principal Clerk)

Rep.)

Sen.)

1 moves to amend the bill on page 7, line 30

2 () WHICH CHANGES THE TITLE

3 by deleting the word "House" and substituting
4 the word "Senate" ;

5 _____

6 and on page 7, line 32, by deleting the

7 word "House" and substituting the word

8 "Senate",

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED 

ADOPTED  FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 729

DATE 7/12/07

S. B. No. _____

Amendment No. 3

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE H729-CSRB-51[V.12]

Rep.) Apodoca
Sen.)

1 moves to amend the bill on page 5, line 31 through 34

2 () WHICH CHANGES THE TITLE

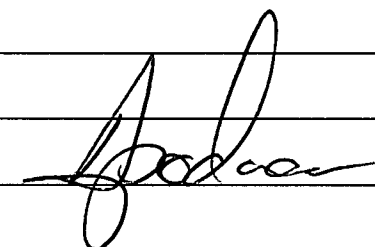
3 by rewriting the lines to read:

4 "(f) Every insurer shall maintain safeguards within its
5 auto insurance business at the point of sale, renewal,
6 and claim to identify misrepresentations by applicants
7 regarding their addresses and the places their
8 motor vehicles are garaged. Identified misrepresentations
9 are subject to the requirements of Article 2 of this
10 Chapter. "
11 ;

12 and on page 5, line 22

13 by rewriting the line to read:

14 "any statement or information provided or action
15 taken pursuant to ~~this~~ this section."
16
17
18
19

SIGNED 

ADOPTED ☒ FAILED ☐ TABLED ☐

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 729

DATE 7/12/07

S. B. No. _____

Amendment No. 4

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE H729-CSRG-5[r.12]

Rep.)

Sen.)

Apodoca

1 moves to amend the bill on page 7, line 11

2 () WHICH CHANGES THE TITLE

3 by deleting "that the owner understands"

4 _____

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

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. _____

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 7/12/07

Amendment No. 5

(to be filled in by
Principal Clerk)

page 1 of 2

Rep.) _____

Sen.) _____

*23 & 24
~~23 & 24~~*

① moves to amend the bill on page 4, line 5
 () WHICH CHANGES THE TITLE
 by RE-WRITING THESE LINES TO READ "It
shall be a Class H Felony for ANY
PERSON who, with the intent to
DECEIVE AN INSURER, DOES ANY OF THE
following:

② p. 5, lines 35 & 36 ... by changing the
 word "brandant" to "false or
 misleading"

③ p. ~~5~~, line 12 ... by changing the word
 "brandant" to "false or ~~misleading~~"

④ p. 8, lines 38 & 39. by ~~changing~~ deleting the
 words "falsely claims" & "inserting" provides
 false or misleading information as to "

SIGNED Ken

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 7/12/07

Amendment No. 5

(to be filled in by
Principal Clerk)

Rep.) _____

Sen.) _____

page 2 of 2

1 moves to amend the bill on page 8, line 35

2 () WHICH CHANGES THE TITLE

3 by changing the word "prevalent" to

4 "false or misleading"

5 _____

6 _____

7 _____

8 _____

9 _____

10 p. 9 - lines 6 1 7 2 8

11 by re-writing the ~~first~~ ^{first 2 sentences} to read:

12 Section 2 of this act is effective

13 when it becomes law. Sections 1, 3,

14 4, 6 & 7 of this act become effective

15 January 1, 2008.

16 _____

17 _____

18 _____

19 _____

SIGNED _____

ADOPTED ✓

FAILED _____

TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 729 (Second Edition)
SHORT TITLE: Penalties for Insurance Rate Evasion Fraud.-AB
SPONSOR(S): Representatives Holliman and Goforth

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Correction	Some fiscal impact anticipated; however, the exact amount cannot be determined. See pp. 2-4, "Assumptions and Methodology"				
Judicial					
Insurance	No impact anticipated.				
TOTAL EXPENDITURES:					
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; Department of Insurance.					
EFFECTIVE DATE: Sections 1 and 2 become effective Jan. 1, 2008; remainder is effective upon ratification.					
*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:

Section 1: Creates new G.S. 58-36-120, which makes it a Class H felony offense for any person to, *with the intent to deceive an insurer in the course of obtaining auto insurance*, do any of the following:

1. Present, or cause to be presented, a written or oral statement that is known to falsely claim an applicant's eligibility.
2. Assist, abet, solicit, or conspire with another person to prepare or make any written or oral statement that falsely claims eligibility, and is intended to be presented to an insurer.

The statute also establishes the criteria for eligibility, and mandates that agents require applicants to "sign" statements of eligibility, which may be made orally (if over the phone and recorded) or electronically (if by Internet). In addition, it requires that insurers and their agents verify certain applicant information and retain records in accordance with rules adopted by the Commissioner of Insurance. Furthermore, it mandates that each insurer conduct an annual audit (minimum) for misrepresentations by applicants, copies of which are to be provided to the Commissioner upon request. The statute also authorizes insurers, in the event that fraudulent information is found, to: 1) Refuse to issue a policy, 2) Cancel or refuse to renew a policy that has been issued; 3) Deny coverage for any bodily injury or property damage suffered by the applicant (does not apply to innocent third parties).

Section 2: Amends G.S. 58-2-163 to also require insurers (includes employees and representatives) to notify the Commissioner of a believed violation of new G.S. 58-36-120, and to provide a complete statement of all relevant facts and circumstances of the case.

Section 3: Authorizes the Joint Legislative Transportation Oversight Committee to study the issues related to automobile insurance rate evasion, and to report findings and any recommended legislation to the General Assembly in the 2008 Session.

Section 4: Provides that Sections 1 and 2 become effective January 1, 2008, and apply to applications made on or after that date. The remainder of the act is effective upon ratification.

ASSUMPTIONS AND METHODOLOGY:

General

Proposed G.S. 58-36-120 specifies that an applicant is eligible for auto insurance in North Carolina, if he or she meets any of the following criteria:

1. Is a resident of North Carolina, who owns a motor vehicle registered and principally garaged in the state.
2. Is a resident who has a valid North Carolina drivers license, or who is required to file proof of financial responsibility (under Article 9A or 13 of Chapter 20) to register a motor vehicle or to obtain a drivers license.
3. Is a nonresident who owns a motor vehicle registered and principally garaged in North Carolina.

The statute also provides that the State, and its agencies, cities, counties, and their agencies are eligible. However, a person who meets the above criteria is ineligible if that person: 1) has not paid the insurance premium in a timely manner; 2) has a valid unsatisfied judgment of record against him/her for the recovery of insurance premiums due, and who has not been discharged from paying the judgment; and/or 3) does not provide the information necessary to obtain insurance.

It is not known how many current residents and non-residents would be excluded by the above criteria, and would therefore be "ineligible" for auto insurance. Nor is it known how many would engage in the

proscribed acts, falsely claiming eligibility to obtain insurance. Consequently, the number of resultant charges and convictions is presently indeterminate. However, based on current resource levels, Fiscal Research expects that any additional charge and/or conviction will generate some additional fiscal impact for the Courts and Corrections.

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.

It is not known how many new convictions and active sentences might occur for the proposed offenses. In FY 2005-06, 34% of Class H felony convictions received active sentences, with an average estimated time served of approximately 11 months.²

Assuming this sentencing pattern, if three Class H convictions were to occur 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; whereas, 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 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 \$58,195 by FY 2009-10.⁴

Department of Correction – Division of Community Corrections

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 additional non-active sentences result, the Division of Community Corrections could incur 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. Included below is a brief discussion of DCC supervision costs, per offender:

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.

² These FY 2005-06 statistics, per offense class, represent 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.

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). “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 for FY 2008-09, given the effective date of January 1, 2008 and typical lag time between charge and conviction (6 months).

- 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.

Judicial Branch

Although it is not known how many additional Class H felony charges might result for the proposed offenses, the Administrative Office of the Courts expects that any additional caseload will increase court-time requirements and the associated costs of case disposal - jury involvement, and workloads for district attorneys, superior court judges, clerks, court reporters, and indigent defense counsel. Presently, the estimated costs per single Class H felony trial and plea are \$7,345 and \$325, respectively. Actual costs could vary from these estimates, which account for indigent defense.

Department of Insurance

The Department of Insurance does not anticipate any additional fiscal impact due to the proposed legislation.

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction; Department of Insurance.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bryce Ball, Jim Mills, Doug Holbrook

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 21, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/12/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Elmer Ferniga	DMAC Inst AIAN.C
David Stoller	STATE FARM INS. COS.
Robert Paschal	Yonny, Moore
Jen Stewart	IFNC
Susan Valauri	Naturemurder
Bill Scobbin	Ice
Doug Byrd	Commerce
Dave	NUDH
Johanna Reese	DOT
Rebecca Shigley	DOI
Heleen Gorch	OMV

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee

07/12/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME

FIRM OR AGENCY AND ADDRESS

Brenda Freeman

DMV

DAVID BAUM

KENNEDY LOVINGTON

Amy McCorkay

Smith Anderson

Zeh O'Leary
Susanne Streib

NMRS

NCRUA

Amy Schilder

HANC

Barbara Morales Burke

NCDOI

Wayne Goodwin

NCDOI

Full O'Brien

FFFPNC

Adam Keith

NCGA

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee

07/12/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Penny Griffin	Daily Bulletin
Kayes Holmes	NCLA
Jim Hunt	JD/AL, PA
Russ Dubisky	IFNC
Andrea White	Gov. Office
George Hincapie	Discovery
Gay Harris	NCPMA

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, July 17, 2007, 11:00 AM
1027, LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 215	Litter Reduction Act of 2007.	Senator Berger
SB 668	Energy Conservation in State Buildings.	Senator Cowell
HB 265	Establish High-Risk Pool.	Representative Underhill Representative England, M.D. Representative Holliman Representative Insko
HB 729	Penalties for Insurance Rate Evasion Fraud.-AB	Representative Goforth Representative Holliman
HB 773	Protect Military Personnel/Life Insurance.-AB	Representative Martin Representative Dickson Representative Lucas Representative Glazier

Other Business

Adjournment

**SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP
COMMITTEE**

**Tuesday, July 17, 2007 at 11:00 a.m.
Room 1027, Legislative Building**

MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met at 11:00 a.m. on July 17, 2007, in Room 1027 of the Legislative Building. Fifteen members of the committee were present. Senator R. C. Soles, Jr., Chair of the Committee, presided.

Senator Soles introduced the pages who were assisting in the meeting: Reid Soles, Mary Rudolf, Meg McNeill and Bayly Hassell of Guilford County, sponsored by Senator Kay Hagan; Jordan Grimes of Lenoir County, sponsored by Senator Jean Preston; and Thomas Yarboro of Wayne County, sponsored by Senator John Kerr.

Senator Soles announced that HB 265, Establish High-Risk Pool, would not be heard at today's meeting, but will be back on the agenda for the Thursday meeting.

Senator Soles recognized Representative Bruce Goforth to present HB 729, Penalties for Insurance Rate Evasion Fraud.-AB. Senator William Purcell moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Ms. Rose Vaughan Williams explained the changes in the bill made since the previous meeting. Senator Floyd McKissick moved to give an unfavorable report to the bill, but favorable as to the committee substitute bill. The motion carried.

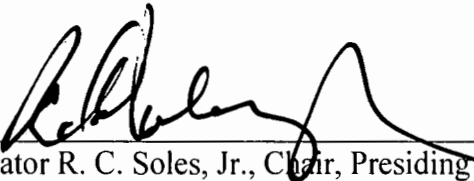
Senator Soles recognized Senator Janet Cowell to present SB 668, Energy Conservation in State Buildings. Senator David Hoyle moved adoption of a proposed committee substitute for purposes of discussion. The motion carried. Senator Hoyle moved to give the bill an unfavorable report, but favorable as to the committee substitute bill with a recommended referral to the Appropriations/Base Budget Committee. The motion carried.

Senator Soles recognized Representative Grier Martin to present HB 773, Protect Military Personnel/Life Insurance.-AB. Representative Martin said there is a proposed committee substitute being written and requested the bill be held until the Thursday meeting.

Senator Soles recognized Senator Doug Berger to present SB 215, Litter Reduction Act of 2007 for discussion only. Senator D. Berger spoke in favor of the bill. He introduced Mr. Wyatt McGee, representing the Franklin County Board of County Commissioners, the Franklin County Solid Waste Task Force, Post 52 of the American Legion, and Southeastern Region (Atlanta) for Department of Defense, spoke in favor of the legislation. Mr. Fred Broadwell, representing Sustainable Economies Consulting, spoke in favor of the bill. Ms. Christa Caren Wagner, representing the North Carolina Chapter of the Sierra Club, spoke in favor of the bill. Mr. David Beler, citizen, spoke in favor of the bill. Mr. McGee made a PowerPoint presentation in support of the bill (see attachments). Senator Soles recognized Mr. Butch Gunnells, representing the

North Carolina Beverage Association and several other organizations (see attachments), spoke in opposition to the bill. Mr. Kevin Dietly from Westford, MA, representing Northbridge Environmental Management Consultants, spoke in opposition to the bill (see attachments). Senator Soles thanked the presenters and announced the bill would not be taken up again this session.

The meeting adjourned at 11:55 a.m.



Senator R. C. Soles, Jr., Chair, Presiding



Dot Waugaman, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, July 18, 2007

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

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

S.B.	668	Energy Conservation in State Buildings.	
		Draft Number:	PCS 15118
		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) 729	Penalties for Insurance Rate Evasion Fraud.-AB	
	Draft Number:	PCS 30512
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

6

HOUSE BILL 265
Committee Substitute Favorable 2/27/07
Committee Substitute #2 Favorable 3/6/07
Committee Substitute #3 Favorable 3/29/07
Committee Substitute #4 Favorable 4/18/07
Sixth Edition Engrossed 5/1/07

Short Title: Establish High-Risk Pool.

(Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 6. North Carolina Health Insurance Risk Pool.

"§ 58-50-175. Definitions.

The following definitions apply to this Part:

- (1) "Administrator" – The Pool Administrator selected by the Executive Director in accordance with this Part.
- (2) "Benefit plan" – The coverage offered by the Pool to eligible individuals.
- (3) "Board" – The Board of Directors of the Pool.
- (4) "Commissioner" – The Commissioner of Insurance of North Carolina or the Commissioner's authorized designee.
- (5) "Covered person" – Any individual resident of this State, excluding dependents, who is eligible to receive medical care benefits from any insurer.
- (6) "Creditable coverage" – The same meaning as defined in G.S. 58-68-30(c)(1).
- (7) "Dependent" – A resident spouse, an unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent or guardian, a child who is over 18 years of age and for whom a person may be obligated

- 1 to pay child support, or a child of any age who is disabled and
2 dependent upon the parent or guardian.
- 3 (8) "Executive Director" – The individual selected by a majority vote of
4 the Board members and hired to serve as the Executive Director of the
5 Pool.
- 6 (9) "Federally defined eligible individual" – The same meaning as the
7 defined term "eligible individual" in G.S. 58-68-60(b).
- 8 (10) "Health insurance coverage" – The same meaning as defined in
9 G.S. 58-68-25(a)(5) but does not include benefits described in
10 G.S. 58-68-25(b).
- 11 (11) "Insurance arrangement" – The plan, program, contract, or other
12 arrangement through which medical care is provided by an employer
13 to its officers or employees but does not include medical care covered
14 through an insurer.
- 15 (12) "Insured" – An individual who is eligible to receive benefits from the
16 Pool.
- 17 (13) "Insurer" – Any entity, other than the Pool, that provides medical care
18 benefits, including excess or stop-loss insurance, that covers medical
19 care or administers medical care on any individual in this State. For the
20 purposes of this Part, insurer includes:
- 21 a. An insurance company;
22 b. A hospital or medical service corporation;
23 c. A health maintenance organization;
24 d. A multiple employer welfare arrangement;
25 e. A third-party administrator or claims processor;
26 f. The State Health Plan; and
27 g. Any other nongovernmental entity providing a health benefit
28 plan subject to State insurance regulation.
- 29 (14) "Medical care" – All of the following:
- 30 a. The diagnosis, cure, mitigation, treatment, or prevention of
31 disease, or amounts paid for the purpose of affecting any
32 structure or function of the body;
- 33 b. Transportation primarily for and essential to medical care
34 referred to in sub-subdivision a. of this subdivision; and
- 35 c. Insurance covering medical care referred to in sub-subdivisions
36 a. and b. of this subdivision.
- 37 (15) "Plan of Operation" – The articles, bylaws, and operating rules and
38 procedures adopted by the Board in accordance with this Part.
- 39 (16) "Pool" – The North Carolina Health Insurance Risk Pool.
- 40 (17) "Provider" – An individual or entity that provides medical care to
41 individuals residing in this State.
- 42 (18) "Resident" – An individual who has legal status in the United States
43 and who:

- a. Has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement;
 - b. Is legally domiciled in this State on the date of application to the Pool and who is eligible for enrollment in the Pool as a result of the Health Insurance Portability and Accountability Act of 1996; or
 - c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the credit for health insurance costs under Section 35 of the Internal Revenue Code of 1986.
- (19) "Reserve" – The Reserve for the North Carolina Health Insurance Risk Pool.
- (20) "State Health Plan" – The Teachers' and State Employees' Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of Article 3 of Chapter 135 of the General Statutes.
- (21) "Trade Adjustment Assistance Program" (TAA) – Title II of the Trade Act of 2002, P.L. 107-210.

"§ 58-50-180. Risk Pool established; board of directors; plan of operation.

(a) There is hereby created a nonprofit entity to be known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under the supervision and control of the Board.

(b) The Board of the North Carolina Health Insurance Risk Pool shall consist of the Commissioner, who shall serve as an ex officio nonvoting member of the Board, and 11 members appointed as follows:

- (1) One member who represents an insurer, as appointed by the Governor.
- (2) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed by the General Assembly, as follows:
 - a. One member upon the recommendation of the President Pro Tempore of the Senate.
 - b. One member upon the recommendation of the Speaker of the House of Representatives.
- (3) Eight members appointed by the Commissioner, as follows:
 - a. One insurer who sells individual health insurance policies.
 - b. One who represents the insurance industry, as recommended by the insurer who covers the largest number of persons in the State.
 - c. One who is licensed to sell health insurance in this State.

- d. Two who represent the medical provider community, one as recommended by the North Carolina Medical Society and one as recommended by the North Carolina Hospital Association.
- e. One who represents business, as recommended by the North Carolina Citizens for Business and Industry.
- f. One who represents small business, as recommended by the National Federation of Independent Business.
- g. One who is either a health policy researcher or a health economist with experience relating to the operation of high-risk insurance pools.

(c) The initial appointments by the Governor and the General Assembly upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve a term of three years. The initial appointments by the Commissioner under subsubdivisions a., b., and d. of subdivision (b)(3) of this section shall be for a term of two years. The initial appointments by the Commissioner under subsubdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term of one year. All succeeding appointments shall be for terms of three years. Members shall not serve for more than two successive terms.

A Board member's term shall continue until the member's successor is appointed by the original appointing authority. Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur. A Board member may be removed by the appointing authority for cause.

The Board shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. Board members shall receive travel allowances under G.S. 138-6 when traveling to and from meetings of the Board, but shall not receive any subsistence allowance or per diem under G.S. 138-5.

(d) The Board shall submit to the Commissioner a Plan of Operation for the Pool and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of Operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days after the appointment of the Board, or at any time thereafter fails to submit suitable amendments to the Plan of Operation, the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the Commissioner or superseded by a Plan of Operation submitted by the Board and approved by the Commissioner. The Plan of Operation shall:

- (1) Establish procedures for operation of the Pool.
- (2) Establish procedures for selecting a Pool Administrator in accordance with G.S. 58-50-185.

- (3) Establish procedures to create a fund for administrative expenses, which shall be managed by the Board.
 - (4) Establish procedures for the collection, handling, disbursing, accounting, assessing, and auditing of assessments, assets, monies, and claims of the Pool and the Pool Administrator.
 - (5) Develop and implement a program to publicize the existence of the Pool, the eligibility requirements, procedures for enrollment, and availability of State premium subsidies and to maintain public awareness of the Pool.
 - (6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the Executive Director in accordance with G.S. 58-50-230.
 - (7) Establish procedures for identifying and confirming income levels of applicants for Pool coverage who are eligible to receive a State premium subsidy, if a State premium subsidy is available.
 - (8) Provide for other matters as may be necessary and proper for the execution of the Executive Director's powers, duties, and obligations under this Part.
- (e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:
- (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Executive Director in collaboration with the Board, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions.
 - (2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the Pool.
 - (3) Take legal action as necessary to:

 - a. Avoid the payment of improper claims against the Pool or the coverage provided by or through the Plan.
 - b. Recover any amounts erroneously or improperly paid by the Plan.
 - c. Recover any amounts paid by the Pool as a result of mistake of fact or law.
 - d. Recover other amounts due the Pool.
 - (4) Establish rates and rate schedules in accordance with this Part.
 - (5) Issue policies of insurance in accordance with the requirements of this Part.
 - (6) Appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in the operation of the Pool, policy, and other contract design, and any other function within the Pool's authority.

- (7) Establish policies, conditions, and procedures for reinsuring risks of participating health insurers, as defined in G.S. 58-68-25(a), desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.
- (8) Employ and fix the compensation of employees.
- (9) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.
- (10) Provide for reinsurance for the Pool.
- (11) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.
- (12) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Pool more cost-effective.
- (13) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
- (14) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool.
- (15) Assess all insurers in accordance with G.S. 58-50-220.
- (f) The Executive Director, with the approval of the Board, shall operate the Pool in a manner so that the estimated cost of providing the benefit plans offered during any calendar year is not anticipated to exceed the total income the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to exceed income, except that any enrollment cap or suspension shall not apply to federally defined eligible individuals who are eligible to enroll in the Pool pursuant to G.S. 58-50-195(a)(5).
- (g) The Executive Director shall make an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Commissioner, the Joint Legislative Health Care Oversight Committee, and the Committee on Employee Hospital and Medical Benefits. The report shall summarize the activities of the Pool in the preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of administration, and the paid and incurred losses.
- (h) Neither the Board nor the employees of the Pool are liable for any obligations of the Pool. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Pool or its agents or employees, the Board, the Executive Director, or the Commissioner or the Commissioner's representatives for any action

1 taken by them in good faith in the performance of their powers and duties under this
2 Part.

3 (i) The members of the Board are public servants under G.S. 138A-3(30) and are
4 subject to the provisions of Chapter 138A of the General Statutes.

5 **"§ 58-50-185. Administrator.**

6 (a) The Executive Director, in collaboration with the Board, shall select through
7 a competitive bidding process one or more insurers to administer the Pool. The
8 Executive Director shall evaluate bids submitted based on criteria established by the
9 Board. The criteria shall allow for the comparison of information about each bidding
10 administrator and selection of a Pool Administrator based on at least the following:

11 (1) Proven ability to handle health insurance coverage to individuals.

12 (2) Efficiency and timeliness of the claim processing procedures.

13 (3) Estimated total charges for administering the Pool.

14 (4) Ability to apply effective cost containment programs and procedures
15 and to administer the Pool in a cost-efficient manner.

16 (5) Financial condition and stability.

17 (6) Evidence of authority to provide third-party administrative services in
18 North Carolina.

19 (b) The Administrator shall serve for a period specified in the contract between
20 the Pool and the Administrator subject to removal for cause and subject to any terms,
21 conditions, and limitations of the contract between the Pool and the Administrator. At
22 least one year before the expiration of each period of service by an Administrator, the
23 Executive Director shall invite eligible entities, including the current Administrator,
24 unless the current Administrator was removed for cause, to submit bids to serve as the
25 Administrator. Selection of the Administrator for the succeeding period shall be made at
26 least six months before the end of the current period.

27 (c) The Administrator shall perform such functions relating to the Pool as may be
28 assigned to it, including:

29 (1) Verification of eligibility.

30 (2) Payment of claims.

31 (3) Establishment of a premium billing procedure for collection of
32 premiums from individuals covered under the Pool.

33 (4) Other necessary functions to assure timely payment of benefits to
34 covered persons under the Pool.

35 (d) The Administrator shall submit regular reports to the Executive Director and
36 the Board regarding the operation of the Pool. The contract between the Pool and the
37 Administrator shall specify the frequency, content, and form of the report.

38 (e) Following the close of each calendar year, the Administrator shall determine
39 net written and earned premiums, the expense of administration, and the paid and
40 incurred losses for the year and report this information to the Executive Director and the
41 Board on a form prescribed by the Executive Director.

42 (f) The Administrator shall be paid as provided in the contract between the Pool
43 and the Administrator.

44 **"§ 58-50-190. Risk Pool rates and policy forms.**

1 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
2 adjustments, expense allowances, agent referral fees, claim reserve formulas, and any
3 other actuarial function appropriate to the operation of the Pool. Rates and rate
4 schedules may be adjusted for appropriate factors such as age, sex, and geographic
5 variation in claim cost and shall take into consideration appropriate rating factors in
6 accordance with established actuarial and underwriting practices.

7 (b) The Pool shall determine the standard risk rate by considering the premium
8 rates charged by other insurers offering health insurance coverage to individuals. The
9 standard risk rate shall be established using reasonable actuarial techniques and shall
10 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
11 hundred seventy-five percent (175%) of rates established as applicable for individual
12 standard rates and shall be adjusted annually, at the time of annual renewal.

13 (c) The Executive Director, with the approval of the Board and the
14 Commissioner, shall have the authority to develop incentive programs with premium
15 discounts. The Pool may provide for premium surcharges for covered individuals who
16 are smokers. Premium surcharge rates shall be established by the Executive Director, in
17 collaboration with the Board, subject to the approval of the Commissioner.

18 (d) Provider reimbursement rates under Pool coverage shall be limited to the
19 rates allowed for providers under the Medicare Program for those services covered by
20 Medicare. The Board shall establish reimbursement rates for services for which
21 Medicare has not established an allowed rate. Providers rendering medical care to an
22 insured shall accept payment of the amount established under this subsection, including
23 any applicable deductible, coinsurance, or co-payment amounts, as payment in full for
24 services rendered.

25 (e) The Pool shall submit all premium rates and premium rate schedules and
26 amendments to the Commissioner for approval. The Pool shall not use any premium
27 rates, premium rate schedules or amendments to the rates and schedules unless the
28 Commissioner has approved them. The Commissioner, in evaluating the premium rates
29 and premium rate schedules, shall consider the factors provided in this section. The Pool
30 shall provide all individuals enrolled in the Pool with at least 45 days' notice of any
31 change in Pool premium rates or premium rate schedules.

32 (f) The Pool shall submit all policy forms, riders, endorsements, and applications
33 for coverage to the Commissioner for approval. The Pool shall not use any policy forms,
34 riders, endorsements, or applications for coverages unless the Commissioner has
35 approved them. Except for any provisions that are specifically treated otherwise under
36 this Part, the provisions of this Chapter that apply to benefit plans and policy forms of
37 health insurers generally shall apply to the benefit plans offered and policy forms used
38 by the Pool.

39 **"§ 58-50-195. Eligibility for Pool coverage.**

40 (a) Any individual who is and continues to be a resident of this State is eligible
41 for Pool coverage if the individual provides evidence of any of the following:

- 42 (1) A notice of rejection or refusal to issue substantially similar health
43 insurance coverage for health reasons by an insurer. A rejection or
44 refusal by an insurer offering only stop-loss, excess loss, or

1 reinsurance coverage with respect to the applicant is not sufficient
2 evidence of eligibility.

3 (2) An offer to issue health insurance coverage only with a conditional
4 rider that limits coverage for the individual's high-risk medical
5 condition.

6 (3) A refusal by an insurer to issue health insurance coverage except at a
7 rate exceeding the Pool rate.

8 (4) A diagnosis of the individual with one of the medical or health
9 conditions listed by the Board in accordance with this section. An
10 individual diagnosed with one or more of these conditions is eligible
11 for Pool coverage without applying for other health insurance
12 coverage.

13 (5) Qualification as a federally defined eligible individual, whether or not
14 currently covered by an insurer under that qualification.

15 (6) An individual who is legally domiciled in this State and is eligible for
16 the credit for health insurance costs under the Trade Adjustment
17 Assistance Reform Act of 2002, section 35 of the Internal Revenue
18 Code of 1986. Each dependent of an individual who is eligible for Pool
19 coverage under this subdivision shall also be eligible for Pool
20 coverage.

21 (7) The individual has current individual health insurance coverage at a
22 rate exceeding the Pool rate.

23 (b) The Board, upon recommendation of the Executive Director, shall adopt a list
24 of medical or health conditions for which a person shall be eligible for Pool coverage
25 under subdivision (a)(4) of this section. The Board may amend the list as the Board
26 considers appropriate.

27 (c) An individual is not eligible for coverage under the Pool if:

28 (1) The individual has or obtains medical care benefits substantially
29 similar to or more comprehensive than the benefit plan offered by the
30 Pool, or would be eligible to have coverage if the person elected to
31 obtain it, except that:

32 a. An individual may maintain other coverage for the period of
33 time the individual is satisfying any preexisting condition
34 waiting period under a Pool policy; and

35 b. An individual may maintain Pool coverage for the period of
36 time the individual is satisfying a preexisting condition waiting
37 period under another health insurance policy intended to replace
38 the Pool policy.

39 (2) The individual is determined to be eligible for enrollment in the State
40 Medical Assistance Plan.

41 (3) The individual has previously terminated Pool coverage unless 12
42 months have lapsed since the termination, except that this subdivision
43 shall not apply with respect to an applicant who is a federally defined

1 eligible individual or to an applicant eligible for or receiving benefits
2 under the Trade Adjustment Assistance Program.

3 (4) The individual is an inmate or resident of a public institution, except
4 that this subdivision shall not apply with respect to an applicant who is
5 a federally defined eligible individual.

6 (5) The individual's premiums are paid for or reimbursed under any
7 government-sponsored program or by any government agency or
8 health care provider, except as an otherwise qualifying full-time
9 employee, or dependent thereof, of a government agency or health care
10 provider. This subdivision shall not apply for individuals receiving
11 benefits under the Trade Adjustment Assistance Program, or to
12 individuals receiving premium subsidies made available by the State
13 based on individual income levels.

14 (6) The individual has in effect on the date Pool coverage takes effect
15 health insurance coverage from an insurer or insurance arrangement.

16 (d) Coverage under the Pool shall cease:

17 (1) On the date an individual is no longer a resident of this State.

18 (2) On the date an individual requests coverage to end.

19 (3) Upon the death of the covered individual.

20 (4) On the date State law requires cancellation of the Pool policy.

21 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
22 concerning the individual's eligibility or residence to which the
23 individual does not reply.

24 (6) Because the individual has failed to make the payments required under
25 this Part.

26 (e) Except as provided in subsection (d) of this section, an individual who ceases
27 to meet the eligibility requirements of this section may be terminated at the end of the
28 Pool policy period for which the necessary premiums have been paid.

29 **"§ 58-50-200. Unfair referral to Pool.**

30 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of
31 the General Statutes for an employer, an insurer, an insurance producer, as defined in
32 G.S. 58-33-10(7), or a third-party administrator to refer an individual employee to the
33 Pool or arrange for an individual employee to apply to the Pool for the purpose of
34 separating that employee from a group medical care benefit plan provided in connection
35 with the employee's employment. This section shall not prohibit an insurer or insurance
36 producer from informing an individual of other coverage options, including coverage
37 provided by the Pool.

38 **"§ 58-50-205. Minimum Pool benefits.**

39 (a) The Pool shall offer at least two types of benefit plans for individuals eligible
40 under G.S. 58-50-195, including preferred provider organizations with different levels
41 of deductibles and cost-sharing, and at least one choice of a health savings account. The
42 covered services and benefit levels may vary between the types of benefit plans, but at
43 least two types of benefit plans must, at a minimum, cover the benefits and services
44 outlined in the National Association of Insurance Commissioners' (NAIC) Model

1 Health Pool for Uninsurable Individuals Act and be consistent with comprehensive
2 coverage generally available to persons who are eligible for individual health insurance
3 other than Medicare. All benefit plans offered by the Pool shall include disease or case
4 management services.

5 (b) The Board, upon the recommendation of the Executive Director shall adopt
6 rules regarding the lifetime limits and per individual combined coinsurance and
7 deductibles for the health insurance products offered by the Pool. The initial rules shall
8 include not less than one million dollars (\$1,000,000) lifetime limit and a combined
9 annual limit of up to five thousand dollars (\$5,000) per individual on coinsurance and
10 deductibles. The Board, upon recommendation of the Executive Director, shall adopt
11 rules adjusting these limitations at least once every five years to reflect changes in the
12 medical component of the Consumer Price Index.

13 **"§ 58-50-210. Preexisting conditions.**

14 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
15 expenses incurred during the first 12 months following the effective date of coverage as
16 to any condition for which medical advice, care, or treatment was recommended or
17 received as to such conditions during the 12-month period immediately preceding the
18 effective date of coverage, except that no preexisting condition exclusion shall be
19 applied to a federally defined eligible individual.

20 (b) Subject to subsection (a) of this section, the preexisting condition exclusions
21 shall be waived to the extent that similar exclusions, if any, have been satisfied under
22 any prior health insurance coverage that was involuntarily terminated, provided that:

23 (1) Application for Pool coverage is made not later than 63 days following
24 the involuntary termination, and in such case coverage in the Pool
25 shall be effective from the date on which the prior coverage was
26 terminated; and

27 (2) The applicant is not eligible for continuation or conversion rights that
28 would provide coverage substantially similar to Pool coverage.

29 **"§ 58-50-215. Nonduplication of benefits.**

30 (a) The Pool shall be payor of last resort of benefits whenever any other benefit
31 or source of third-party payment is available. Benefits otherwise payable under
32 coverage shall be reduced by all amounts paid or payable through any other medical
33 care benefits and by all hospital and medical expenses paid or payable under any
34 workers' compensation coverage notwithstanding any provision of law to the contrary,
35 automobile medical payment, or liability insurance, whether provided on the basis of
36 fault or no-fault, and by any hospital or medical benefits paid or payable under or
37 provided pursuant to any State or federal law or program.

38 (b) The Pool shall have a cause of action against an eligible person for the
39 recovery of the amount of benefits paid that are not for covered expenses. Benefits due
40 from the Pool may be reduced or refused as a setoff against any amount recoverable
41 under this subsection.

42 **"§ 58-50-220. Assessments.**

43 (a) For the purposes of providing the funds necessary to carry out the powers and
44 duties of the Pool, and except as provided in subsection (c) of this section, the Pool shall

1 assess all insurers at such time and for such amounts as the Board finds necessary to
2 ensure effective and efficient operation of the Pool. Assessments shall be due in not less
3 than 30 days after prior written notice to the insurers and shall accrue interest at twelve
4 percent (12%) per annum on and after the due date.

5 (b) Except with respect to special assessments authorized under this section, and
6 except as otherwise provided in subsection (c) of this section, the Pool shall assess each
7 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured or
8 reinsured or for whom medical care benefits are administered by each insurer per
9 month. The assessment shall be based on actual or expected losses, actuarially
10 appropriate reserves, and administrative expenses in excess of expected or collected
11 premiums and federal loss reimbursements, if any, received by the Pool.

12 In addition to the assessment, the Pool may impose on each insurer a special
13 assessment only when enrollment in the Pool has been capped or suspended. A special
14 assessment may be made to cover only the additional losses of the Pool that are
15 expected to result from the continued entry into the Pool by federally defined eligible
16 individuals during the time that enrollment is closed to all other individuals eligible
17 under G.S. 58-50-195. The special assessment shall be based on actual or expected
18 losses, actuarially appropriate reserves, and administrative expenses in excess of
19 expected and collected premiums for the federally defined eligible individuals who
20 enrolled or are expected to enroll while the suspension of enrollment is in effect.

21 (c) Except with respect to special assessments authorized under this section, the
22 Pool shall assess each insurer an amount not to exceed the following limitations for each
23 covered individual insured, reinsured, or for whom medical care benefits are
24 administered, per month:

25 (1) Seventy cents (70¢) for the 2008 and 2009 calendar years.

26 (2) One dollar (\$1.00) for the 2010 calendar year.

27 (3) One dollar and thirty cents (\$1.30) for the 2011 calendar year.

28 (4) One dollar and seventy cents (\$1.70) for the 2012 calendar year.

29 (5) Two dollars (\$2.00) for the 2013 calendar year and all years thereafter.

30 (d) The Pool shall make reasonable efforts designed to ensure that each covered
31 individual is counted only once with respect to any assessment. For that purpose, the
32 Pool shall require each insurer to include in its count of covered individuals all
33 individuals whose coverage it insures (including by way of excess or stop-loss
34 coverage) in whole or in part and regardless of any reinsurance on those lives that it
35 may obtain, except that lives covered under the Pool and reinsured or administered by a
36 third-party administrator shall not be included in the count. The Pool shall allow a
37 reinsurer to exclude from its number of covered individuals those individuals who have
38 been counted by the primary insurer or by the primary reinsurer or primary excess or
39 stop-loss insurer for the purposes of determining its assessment under this section.

40 (e) The Pool may verify each insurer's assessment based on annual statements
41 and other reports deemed to be necessary by the Pool. The Pool may use any reasonable
42 method of estimating the number of covered individuals of an insurer if the specific
43 number is unknown.

(f) If assessments and other receipts by the Pool exceed the actual losses and administrative expenses of the Pool, the excess shall be held at interest and used by the Pool to offset future losses or to reduce Pool premiums. Future losses include reserves for claims incurred but not reported.

(g) The Commissioner may suspend or revoke, after notice and hearing, the license of any insurer that fails to pay an assessment. As an alternative, the Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100.00) per month.

"§ 58-50-225. Reserve created.

(a) There is hereby established a reserve, to be known as the Reserve for the North Carolina Health Insurance Risk Pool.

All premiums, fees, charges, rebates, refunds, or any other receipts including, but not limited to, earnings on investments, occurring or arising in connection with the Pool, as established by this Article, shall be deposited into the Reserve. Disbursements from the Reserve shall include any and all amounts required to pay the claims, benefits, and administrative costs as may be determined by the Executive Director and the Board.

The Reserve shall be deposited with the State Treasurer and invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(b) Disbursement from the Reserve may be made by warrant drawn on the State Treasurer by the Executive Director, or the Executive Director and the Board may by contract authorize the Administrator to draw the warrant.

"§ 58-50-230. Complaint procedures.

An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a grievance committee appointed by the Executive Director. Members of the Board shall not serve on the grievance committee. The grievance process shall comply with G.S. 58-50-62. The grievance committee shall report to the Board after completion of the review of each complaint. The Executive Director shall retain all written complaints regarding the Pool at least until the third anniversary of the date the Pool received the complaint. Independent review of an appeal decision upholding a noncertification or a second-level grievance review decision upholding a noncertification shall be subject to review pursuant to Part 4 of this Article.

"§ 58-50-235. Audit.

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Reserve for the North Carolina Health Insurance Risk Pool.

"§ 58-50-240. Taxation.

The Pool established under this Part is exempt from any and all State taxes.

"§ 58-50-245. Rules.

The Board and the Commissioner may adopt rules pursuant to Chapter 150B of the General Statutes, including temporary rules, to implement this Part.

"§ 58-50-250. Collective action.

1 The establishment of rates, forms, or procedures, and any other joint or collective
2 action required by this Part may not be the basis of any legal action or criminal or civil
3 liability or penalty against the Pool or any insurer.

4 **"§ 58-50-255. Pool financing; Board reporting.**

5 (a) The Board shall monitor methods of financing the Pool to ensure a stable
6 funding source and allow for its continued operation. This monitoring shall include
7 supplementary sources of funding, such as funds obtained from public and private
8 not-for-profit foundations, or other appropriate and available State or non-State funds.
9 The Board shall also review on a regular basis:

- 10 (1) The number of individuals in this State who are uninsured as of a date
11 certain because of high-risk conditions.
- 12 (2) The number of uninsured individuals who would qualify for coverage
13 under the Pool based on G.S. 58-50-195 and its Plan of Operation.
- 14 (3) The cost of coverage under each of the health insurance plans
15 developed by the Board, including administrative costs.
- 16 (4) The extent to which assessments meet or exceed amounts necessary
17 for coverage and Board operations.
- 18 (5) The status of a request by the State to the Centers for Medicare and
19 Medicaid Services for approval of the North Carolina Health Insurance
20 Risk Pool to be considered an acceptable "alternative mechanism"
21 under the federal Health Insurance Portability and Accountability Act
22 in accordance with 45 C.F.R. § 148.128(e).
- 23 (6) Methods for providing a premium subsidy on a sliding scale basis for
24 individuals with incomes up to three hundred percent (300%) of the
25 federal poverty guidelines.

26 (b) The Board shall report its findings and recommendations to the General
27 Assembly on March 1, 2008, and annually thereafter."

28 **§§ 58-50-260 through 265: Reserved for future codification purposes.**

29 **SECTION 1.2.** Effective January 1, 2014, G.S. 58-50-220(c) as enacted in
30 Section 1.1 of this act is repealed.

31 **SECTION 1.3.** Effective January 1, 2014, G.S. 58-50-220(b) as enacted in
32 Section 1.1 of this act reads as rewritten:

33 "(b) Except with respect to special assessments authorized under this section, ~~and~~
34 ~~except as otherwise provided in subsection (c) of this section,~~ the Pool shall assess each
35 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured or
36 reinsured or for whom medical care benefits are administered by each insurer per
37 month. The assessment shall be based on actual or expected losses, actuarially
38 appropriate reserves, and administrative expenses in excess of expected or collected
39 premiums and federal loss reimbursements, if any, received by the Pool.

40 In addition to the assessment, the Pool may impose on each insurer a special
41 assessment only when enrollment in the Pool has been capped or suspended. A special
42 assessment may be made to cover only the additional losses of the Pool that are
43 expected to result from the continued entry into the Pool by federally defined eligible
44 individuals during the time that enrollment is closed to all other individuals eligible

1 under G.S. 58-50-195. The special assessment shall be based on actual or expected
2 losses, actuarially appropriate reserves, and administrative expenses in excess of
3 expected and collected premiums for the federally defined eligible individuals who
4 enrolled or are expected to enroll while the suspension of enrollment is in effect."

5 **SECTION 1.4.** On or before January 1, 2008, the Executive Director shall
6 notify the Centers for Medicare and Medicaid Services that the State has established the
7 North Carolina Health Insurance Risk Pool and shall request that the North Carolina
8 Health Insurance Risk Pool be approved as an acceptable "alternative mechanism"
9 under the federal Health Insurance Portability and Accountability Act in accordance
10 with 45 C.F.R. § 148.128(e). The Executive Director shall notify the Commissioner
11 when the Centers for Medicare and Medicaid Services approve the request.

12 **SECTION 1.5.** The Executive Director shall study methods for encouraging
13 healthy behaviors among the Pool's insureds and report the Executive Director's
14 findings to the Board and to the General Assembly not later than one year after initial
15 implementation of the Pool.

16 **SECTION 1.6.** Notwithstanding G.S. 58-50-210(a), individuals enrolling in
17 the Pool within six months of the date that enrollment into the Pool first begins shall be
18 subject to a six-month preexisting condition waiting period.

19 **SECTION 1.7.** G.S. 120-70.111(a) reads as rewritten:

20 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
21 continuing basis, the provision of health care and health care coverage to the citizens of
22 this State, in order to make ongoing recommendations to the General Assembly on ways
23 to improve health care for North Carolinians. To this end, the Committee shall study the
24 delivery, availability, and cost of health care in North Carolina. The Committee shall
25 also review, on a continuing basis, the implementation of the State Health Insurance
26 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
27 General Statutes. As part of its review, the Committee shall advise and consult with the
28 Department of Health and Human Services as provided under G.S. 108A-70.21. The
29 Committee shall review, on a continuing basis, the implementation of the North
30 Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter
31 58 of the General Statutes. As part of its review, the Committee shall advise and consult
32 with the Executive Director of the North Carolina Health Insurance Risk Pool as
33 provided under G.S. 58-50-180. The Committee may also study other matters related to
34 health care and health care coverage in this State."

35 **SECTION 2.1.** In addition to the Reserve for the North Carolina Health
36 Insurance Risk Pool established under G.S. 58-50-225, as enacted in this act, there is
37 established in the Department of Insurance two separate funds, as follows:

- 38 (1) The Start-up Reserve – State Funds. State funds appropriated to this
39 Fund shall be used to support reasonable expenses for personnel to
40 carry out the Board's responsibilities under the Pool, including
41 contracting a third-party administrator. Funds shall be allocated from
42 this Fund contingent upon the successful application to and award of
43 federal funds for the purposes of this section. Funds shall be allocated
44 by the Commissioner of Insurance for the reasonable expenses of the

1 Board in conducting its duties under this Article that are incurred on or
2 before July 1, 2009. At the end of the fiscal year, any interest or
3 investment income earned on these funds shall be transferred to the
4 General Fund.

- 5 (2) The Start-up Reserve – Federal Funds. Federal funds received in lump
6 sum or as a draw-down grant for the purposes of this Article shall be
7 deposited to this Reserve. The Commissioner of Insurance shall, at the
8 end of the fiscal year in which federal funds have been received,
9 transfer from this Reserve to the General Fund an amount not to
10 exceed the amount of State appropriations made for these purposes
11 from the Start-up Reserve – State Funds.

12 **SECTION 2.2.** It is the intent of the General Assembly that in the event the
13 State is not awarded the federal funds anticipated, the General Fund shall be held
14 harmless.

15 **SECTION 3.** The provisions of this act are severable. If any provision of
16 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
17 other provisions of the act that can be given effect without the invalid provision.

18 **SECTION 4.** This act becomes effective upon appropriation by the General
19 Assembly of funds to the Start-Up Reserve – State Funds established under Section 2.1
20 of this act. Nothing in this act shall require the General Assembly to appropriate any
21 funds to implement this act. Sections 2.1 and 2.2 of this act expire July 1, 2009. In the
22 event this bill becomes law, enrollment in the Pool shall commence no later than
23 January 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 729*

Committee Substitute Favorable 5/17/07

Short Title: Penalties for Insurance Rate Evasion Fraud.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE
INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY
THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 36 of Chapter 58 of the General Statutes is amended by
adding a new section to read:

"§ 58-36-120. Rate evasion fraud; prevention programs.

(a) The following definitions apply in this section:

(1) Applicant. – One or more persons applying for the issuance of an auto
insurance policy.

(2) Auto insurance. – Nonfleet private passenger motor vehicle insurance.

(3) Eligible applicant. – A person who is any of the following:

a. A resident of this State who owns a motor vehicle registered
and principally garaged in this State.

b. A resident of this State who has a valid North Carolina drivers
license or who is required to file proof of financial
responsibility under Article 9A or 13 of Chapter 20 of the
General Statutes in order to register a motor vehicle or obtain a
drivers license in this State.

c. A nonresident of this State who owns a motor vehicle registered
and principally garaged in this State.

d. The State and its agencies and cities and counties in this State
and their agencies.

(4) Insurer. – A member of the Bureau that is licensed to write and is
writing auto insurance in this State.

(b) A person is not an eligible applicant, as defined in subdivision (a)(3) of this
section, if the person has not tendered timely payment of premium; if there is a valid

1 unsatisfied judgment of record against that person for recovery of amounts due for
2 motor vehicle insurance premiums and that person has not been discharged from paying
3 the judgment; or if that person does not furnish the information necessary to effect
4 insurance.

5 (c) It shall be a Class H felony for any person, who with the intent to deceive an
6 insurer, to do any of the following:

7 (1) Present or cause to be presented a written or oral statement in support
8 of an application for auto insurance, knowing that the application
9 contains false or misleading information that states the applicant is an
10 eligible applicant when the applicant is not an eligible applicant.

11 (2) Assist, abet, solicit, or conspire with another person to prepare or make
12 any written or oral statement that is intended to be presented to an
13 insurer in connection with or in support of an application for auto
14 insurance, if the person knows that the statement contains false or
15 misleading information that states the applicant is an eligible applicant
16 when the applicant is not an eligible applicant.

17 (d) In order to prevent persons who are not eligible applicants from purchasing
18 auto insurance in this State, an agent shall require every applicant for insurance to sign a
19 statement that includes all of the following attestations:

20 (1) The applicant and all named insureds to be insured on the policy for
21 which application is made are eligible applicants.

22 (2) All of the information provided by the applicant is true and correct.

23 (3) The applicant understands that providing fraudulent information as to
24 the applicant's or any named insured's status as an eligible applicant
25 may result in criminal prosecution and the denial of coverage under the
26 policy for which application is made for any bodily injury or property
27 damage suffered by the applicant.

28 (e) The statement required under subsection (d) of this section may be made:

29 (1) Orally if application for an auto insurance policy is made by way of
30 telephone and the applicant's answers are recorded in writing by the
31 agent; or

32 (2) Electronically if application for an auto insurance policy is made by
33 way of the Internet.

34 (f) The insurer and its agent shall also take reasonable steps to verify that the
35 information provided by an applicant regarding the applicant's address and the place the
36 motor vehicle is garaged is correct. The agent shall retain copies of any items obtained
37 under this section as required under the record retention rules adopted by the
38 Commissioner.

39 (g) Every insurer shall audit its auto insurance business at least annually for
40 misrepresentations by applicants regarding their addresses and the places their motor
41 vehicles are garaged. A copy of the audit shall be provided to the Commissioner upon
42 request.

43 (h) If an applicant provides fraudulent information as to the applicant's or any
44 named insured's status as an eligible applicant and that fraudulent information makes

1 the applicant or any named insured appear to be an eligible applicant when that person
2 is in fact not an eligible applicant, the insurer may do any or all of the following:

3 (1) Refuse to issue a policy.

4 (2) Cancel or refuse to renew a policy that has been issued.

5 (3) Deny coverage for any bodily injury or property damage suffered by
6 the applicant. This subdivision does not apply to innocent third
7 parties."

8 **SECTION 2.** G.S. 58-2-163 reads as rewritten:

9 **"§ 58-2-163. Report to Commissioner.**

10 Whenever any insurance company, or employee or representative of such company,
11 or any other person licensed or registered under Articles 1 through 67 of this Chapter
12 knows or has reasonable cause to believe that any other person has violated
13 G.S. 58-2-161, 58-2-162, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), 58-36-120, or whenever
14 any insurance company, or employee or representative of such company, or any other
15 person licensed or registered under Articles 1 through 67 of this Chapter knows or has
16 reasonable cause to believe that any entity licensed by the Commissioner is financially
17 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the
18 Commissioner and provide the Commissioner with a complete statement of all of the
19 relevant facts and circumstances. Such report is a privileged communication, and when
20 made without actual malice does not subject the person making the same to any liability
21 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of
22 any licensee who willfully fails to comply with this section."

23 **SECTION 3.** The Joint Legislative Transportation Oversight Committee
24 may study the issues related to automobile insurance rate evasion (S.B. 795 –
25 Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended
26 legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

27 **SECTION 4.** Sections 1 and 2 of this act become effective January 1, 2008,
28 and apply to applications for nonfleet private passenger motor vehicle insurance made
29 on and after that date. This remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 729*
Committee Substitute Favorable 5/17/07
PROPOSED COMMITTEE SUBSTITUTE H729-CSRG-51 [v.16]

7/17/2007 9:33:59 AM

Short Title: Penalties for Insurance Rate Evasion Fraud.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE
INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY
THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-1 reads as rewritten:

"§ 58-37-1. Definitions.

As used in this Article:

- (1) "Cede" or "cession" means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility.
- (2) Repealed by Session Laws 1991, c. 720, s. 6.
- (3) "Company" means each member of the Facility.
- (4) "~~Eligible risk~~-risk," for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance ~~means a person; means:~~
 - a. ~~A person who~~ is a resident of this State who owns a motor vehicle registered or principally garaged in this ~~State or who State;~~
 - b. ~~A person who~~ has a valid driver's license in this ~~State or who State;~~
 - c. ~~A person who~~ is required to file proof of financial responsibility pursuant to under Article 9A or 13 of the ~~North Carolina Motor Vehicle Code Chapter 20 of the General Statutes~~ in order to register his or her motor vehicle or to obtain a driver's license in this State; or
 - d. ~~a~~ ~~A~~ nonresident of this State who owns a motor vehicle registered or principally garaged in this State, ~~or the State; or~~

e. The State and its agencies and cities, counties, towns and municipal corporations in this State and their agencies, provided however, that agencies.

However, no person shall be deemed an eligible risk if timely payment of premium is not tendered or if there is a valid unsatisfied judgment of record against such person for recovery of amounts due for motor vehicle insurance premiums and such person has not been discharged from paying said judgment, or if such person does not furnish the information necessary to effect insurance.

(4a) "Eligible risk," for the purpose of nonfleet private passenger motor vehicle insurance means:

a. A resident of this State who owns a motor vehicle registered or principally garaged in this State;

b. A resident of this State and who has a valid driver's license issued by this State;

c. A person who is required to file proof of financial responsibility under Article 9A or 13 of Chapter 20 of the General Statutes in order to register his or her vehicle or to obtain a driver's license in this State;

d. A nonresident of this State who owns a motor vehicle registered and principally garaged in this State;

e. A nonresident of the State who is one of the following:

1. A member of the United States Armed Forces stationed in this State who intends to return to his or her home state;

2. The spouse of a nonresident member of the United States Armed Forces stationed in this State who intends to return to his or her home state;

3. An out-of-state student who intends to return to his or her home state upon completion of their time as a student enrolled in school in this State; or

f. The State and its agencies and cities, counties, towns, and municipal corporations in this State and their agencies.

However, no person shall be deemed an eligible risk if timely payment or premium is not tendered or if there is a valid unsatisfied judgment of record against the person for recovery of amounts due for motor vehicle insurance premiums and the person has not been discharged from paying the judgment, or if the person does not furnish the information necessary to effect insurance.

(5) "Facility" means the North Carolina Motor Vehicle Reinsurance Facility established pursuant to the provisions of under this Article.

(6) "Motor vehicle" means every self-propelled vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers). "Motor vehicle" also means a motorcycle, as defined in G.S. 20-4.01(27)d.

- 1 (7) "Motor vehicle insurance" means direct insurance against liability
2 arising out of the ownership, operation, maintenance or use of a motor
3 vehicle for bodily injury including death and property damage and
4 includes medical payments and uninsured and underinsured motorist
5 coverages.

6 With respect to motor carriers who are subject to the financial
7 responsibility requirements established under the Motor Carrier Act of
8 1980, the term, "motor vehicle insurance" includes coverage with
9 respect to environmental restoration. As used in this subsection the
10 term, "environmental restoration" means restitution for the loss,
11 damage, or destruction of natural resources arising out of the
12 accidental discharge, dispersal, release, or escape into or upon the
13 land, atmosphere, water course, or body of water of any commodity
14 transported by a motor carrier. Environmental restoration includes the
15 cost of removal and the cost of necessary measures taken to minimize
16 or mitigate damage to human health, the natural environment, fish,
17 shellfish, and wildlife.

- 18 (8) "Person" means every natural person, firm, partnership, association,
19 trust, limited liability company, firm, corporation, government, or
20 governmental agency.

- 21 (9) "Plan of operation" means the plan of operation approved pursuant to
22 the provisions of this Article.

- 23 (10) Repealed by Session Laws 1977, c. 828, s. 10.

- 24 (11) "Principally garaged" means the vehicle is garaged for six or more
25 months of the current or preceding year on property in this State which
26 is owned, leased, or otherwise lawfully occupied by the owner of the
27 vehicle."

28 **SECTION 2.** G.S. 58-37-50 reads as rewritten:

29 **"§ 58-37-50. Termination of insurance.**

30 No member may terminate insurance to the extent that cession of a particular type of
31 coverage and limits is available under the provisions of this Article except for the
32 following reasons:

- 33 (1) Nonpayment of premium when due to the insurer or producing agent.
34 (2) The named insured has become a nonresident of this State and would
35 not otherwise be entitled to insurance on submission of new
36 application under this Article.
37 (3) A member company has terminated an agency contract for reasons
38 other than the quality of the agent's insureds or the agent has
39 terminated the contract and such agent represented the company in
40 taking the original application for insurance.
41 (4) When the insurance contract has been cancelled pursuant to a power of
42 attorney given a company licensed pursuant to the provisions of G.S.
43 58-35-5.

(5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.

(6) The named insured is no longer an eligible risk under G.S. 58-37-1."

SECTION 3. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-164. Rate evasion fraud; prevention programs.

(a) The following definitions apply in this section:

(1) "Applicant" means one or more persons applying for the issuance or renewal of an auto insurance policy.

(2) "Auto insurance" means nonfleet private passenger motor vehicle insurance.

(3) "Eligible applicant" means a person who is an eligible risk under G.S. 58-37-1(4a).

(4) "Insurer" means a member of the North Carolina Rate Bureau that is licensed to write and is writing auto insurance in this State.

(5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).

(6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S. 58-40-10(1).

(b) It shall be a Class 3 misdemeanor for any person who, with the intent to deceive an insurer, does any of the following:

(1) Present or cause to be presented a written or oral statement in support of an application for auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

(2) Assist, abet, solicit, or conspire with another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than one thousand dollars (\$1,000) for each violation.

(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this

1 section. The agent shall retain copies of any items obtained under this section as
2 required under the record retention rules adopted by the Commissioner and in
3 accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section
4 by obtaining reliable proof of North Carolina residency from the applicant or the
5 applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes
6 but is not limited to:

- 7 (1) A pay stub with the payee's address.
- 8 (2) A utility bill showing the address of the applicant-payor.
- 9 (3) A lease for an apartment, house, modular unit, or manufactured home
10 with a North Carolina address signed by the applicant.
- 11 (4) A receipt for personal property taxes paid.
- 12 (5) A receipt for real property taxes paid to a North Carolina locality.
- 13 (6) A monthly or quarterly financial statement from a North Carolina
14 regulated financial institution.
- 15 (7) A valid unexpired North Carolina driver's license
- 16 (8) A matricula consular or substantially similar document issued by the
17 Mexican Consulate for North Carolina.
- 18 (9) A document similar to that described in subdivision (8) of this section,
19 issued by the consulate or embassy of another country that would be
20 accepted by the North Carolina Division of Motor Vehicles as set forth
21 in G.S. 20-7(b4)(9).
- 22 (10) A valid North Carolina vehicle registration.
- 23 (11) A valid Military ID.
- 24 (12) A valid student ID for a North Carolina school or university.

25 (d) In the absence of actual malice, neither an insurer, the authorized
26 representative of the insurer, a producer, the Commissioner, an organization of which
27 the Commissioner is a member, the North Carolina Reinsurance Facility, nor the
28 respective employees and agents of such persons acting on behalf of such persons shall
29 be subject to civil liability as a result of any statement or information provided or action
30 taken pursuant to this section.

31 (e) In any action brought against a person that may have immunity under
32 subsection (d) of this section for making any statement required by this section or for
33 providing any information relating to any statement that may be requested by the
34 Commissioner, the party bringing the action shall plead specifically in any allegation
35 that subsection (d) of this section does not apply because the person making the
36 statement or providing the information did so with actual malice. Subsections (d) and
37 (e) of this section do not abrogate or modify any existing statutory or common law
38 privileges or immunities.

39 (f) Every insurer shall maintain safeguards within its auto insurance business at
40 the point of sale, renewal, and claim to identify misrepresentations by applicants
41 regarding their addresses and the places their motor vehicles are garaged. Identified
42 misrepresentations are subject to the requirements of Article 2 of this Chapter.

43 (g) If an applicant provides false and misleading information as to the applicant's
44 or any named insured's status as an eligible applicant and that fraudulent information

1 makes the applicant or any named insured appear to be an eligible applicant when that
2 person is in fact not an eligible applicant, the insurer may do any or all of the following:

3 (1) Refuse to issue a policy.

4 (2) Cancel or refuse to renew a policy that has been issued.

5 (3) Deny coverage for any claim arising out of bodily injury or property
6 damage suffered by the applicant. This subdivision does not apply to
7 innocent third parties.

8 (h) In a civil cause of action for recovery based upon a claim for which a
9 defendant has been convicted under this section, the conviction may be entered into
10 evidence against the defendant and shall establish the liability of the defendant as a
11 matter of law for such damages, fees or costs as may proven. The court may award the
12 prevailing party compensatory damages including but not limited to any costs, losses,
13 expenses, and attorney fees incurred in connection with any false statement of eligible
14 risk status made in an application for insurance or incurred in connection with any claim
15 submitted under a policy obtained as a result of a false statement of status as an eligible
16 risk, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can
17 demonstrate that the defendant has engaged in a pattern of violations of this section, the
18 court may award treble damages."

19 **SECTION 4.** G.S. 58-2-163 reads as rewritten:

20 **"§ 58-2-163. Report to Commissioner.**

21 Whenever any insurance company, or employee or representative of such company,
22 or any other person licensed or registered under Articles 1 through 67 of this Chapter
23 knows or has reasonable cause to believe that any other person has violated
24 G.S. 58-2-161, 58-2-162, 58-2-164, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), or whenever any
25 insurance company, or employee or representative of such company, or any other
26 person licensed or registered under Articles 1 through 67 of this Chapter knows or has
27 reasonable cause to believe that any entity licensed by the Commissioner is financially
28 impaired, it is the duty of such person, upon acquiring such knowledge, to notify the
29 Commissioner and provide the Commissioner with a complete statement of all of the
30 relevant facts and circumstances. Such report is a privileged communication, and when
31 made without actual malice does not subject the person making the same to any liability
32 whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of
33 any licensee who willfully fails to comply with this section."

34 **SECTION 5.** The Joint Legislative Transportation Oversight Committee
35 may study the issues related to automobile insurance rate evasion (S.B. 795 –
36 Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended
37 legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

38 **SECTION 6.** G.S. 20-52(a) reads as rewritten:

39 "(a) An owner of a vehicle subject to registration must apply to the Division for a
40 certificate of title, a registration plate, and a registration card for the vehicle. To apply,
41 an owner must complete an application ~~form~~ provided by the Division. The application
42 ~~form~~ must request all of the following information and may request other information
43 the Division considers necessary:

44 (1) The owner's name.

- 1 (1a) If the owner is an individual, the following information:
 - 2 a. The owner's mailing address and residence address.
 - 3 b. The owner's North Carolina drivers license number or North
 - 4 Carolina special identification card number.
- 5 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
- 6 the address of the entity.
- 7 (2) A description of the vehicle, including the following:
 - 8 a. The make, model, type of body, and vehicle identification
 - 9 number of the vehicle.
 - 10 b. Whether the vehicle is new or used and, if a new vehicle, the
 - 11 date the manufacturer or dealer sold the vehicle to the owner
 - 12 and the date the manufacturer or dealer delivered the vehicle to
 - 13 the owner.
- 14 (3) A statement of the owner's title and of all liens upon the vehicle,
- 15 including the names and addresses of all lienholders in the order of
- 16 their priority, and the date and nature of each lien.
- 17 (4) A statement that the owner is an eligible risk for insurance coverage as
- 18 defined in G.S. 58-37-1.
- 19 (5) For registration and certificate of title for a nonfleet private passenger
- 20 motor vehicle, a statement that providing incorrect or false and
- 21 misleading information as to the owner's status as an eligible risk can
- 22 result in criminal prosecution and the denial of insurance coverage for
- 23 any loss of the owner under any insurance policies for which
- 24 application is made if the owner provides false and misleading
- 25 information as to eligible risk status.
- 26 (6) For registration and certificate of title for a nonfleet private passenger
- 27 motor vehicle, a statement that the owner will inform the insurer
- 28 before the next policy renewal if the owner ceases to be an eligible
- 29 risk.

30 The application ~~form~~ must contain the disclosures concerning the request for an
31 applicant's social security number required by section 7 of the federal Privacy Act of
32 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
33 may disclose a social security number obtained under this subsection only for the
34 purpose of administering the motor vehicle registration laws and may not disclose the
35 social security number for any other purpose. The social security number of a person
36 who applies to register a vehicle or of a person in whose name a vehicle is registered is
37 therefore not a public record. A violation of the disclosure restrictions is punishable as
38 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

39 **SECTION 7.** If Senate Bill 1350, 2007 Regular Session, becomes law,
40 Section 6 of this act is repealed and, effective January 1, 2008, G.S. 20-52(a) as
41 amended by Section 2 of Senate Bill 1350 reads as rewritten:

42 "(a) An owner of a vehicle subject to registration must apply to the Division for a
43 certificate of title, a registration plate, and a registration card for the vehicle. To apply,
44 an owner must complete an application ~~form~~ provided by the Division. The application

1 ~~form~~ must request all of the following information and may request other information
2 the Division considers necessary:

3 (1) The owner's name.

4 (1a) If the owner is an individual, the following information:

5 a. The owner's mailing address and residence address.

6 b. One of the following:

7 1. The owner's North Carolina drivers license number or North
8 Carolina special identification card number.

9 2. The owner's home state drivers license number or home state
10 special identification card number and valid active duty military
11 identification card if the owner is a person on active military
12 duty and is stationed in this State.

13 3. The owner's home state drivers license number or home state
14 special identification card number and proof of enrollment in a
15 school in this State if the owner is a permanent resident of
16 another state but is currently enrolled in a school in this State.

17 4. The owner's home state drivers license number or home state
18 special identification card number if the owner or co-owner
19 intends to principally garage the vehicle in this State.
20 "Principally garage" means the vehicle is garaged for six or
21 more months of the year on property in this State which is
22 owned, leased, or otherwise lawfully occupied by the owner of
23 the vehicle.

24 c. For vehicles that have more than one owner, only one co-owner
25 is required to provide the information requested under sub-
26 subdivision b. of this subdivision.

27 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
28 the address of the entity.

29 (2) A description of the vehicle, including the following:

30 a. The make, model, type of body, and vehicle identification
31 number of the vehicle.

32 b. Whether the vehicle is new or used and, if a new vehicle, the
33 date the manufacturer or dealer sold the vehicle to the owner
34 and the date the manufacturer or dealer delivered the vehicle to
35 the owner.

36 (3) A statement of the owner's title and of all liens upon the vehicle,
37 including the names and addresses of all lienholders in the order of
38 their priority, and the date and nature of each lien.

39 (4) A statement that the owner is an eligible risk for insurance coverage as
40 defined in G.S. 58-37-1.

41 (5) For registration and certificate of title for a nonfleet private passenger
42 motor vehicle, a statement that providing incorrect or false and
43 misleading information as to the owner's status as an eligible risk can
44 result in criminal prosecution and the denial of insurance coverage for

1 any loss of the owner under any insurance policies for which
2 application is made if the owner provides false and misleading
3 information as to eligible risk status.

4 (6) For registration and certificate of title for a nonfleet private passenger
5 motor vehicle, a statement that the owner will inform the insurer
6 before the next policy renewal if the owner ceases to be an eligible
7 risk.

8 The application ~~form~~ must contain the disclosures concerning the request for an
9 applicant's social security number required by section 7 of the federal Privacy Act of
10 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
11 may disclose a social security number obtained under this subsection only for the
12 purpose of administering the motor vehicle registration laws and may not disclose the
13 social security number for any other purpose. The social security number of a person
14 who applies to register a vehicle or of a person in whose name a vehicle is registered is
15 therefore not a public record. A violation of the disclosure restrictions is punishable as
16 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

17 **SECTION 8.** Sections 1, 3, 4, 6 and 7 of this act become effective January 1,
18 2008. Sections 1 applies to motor vehicle insurance policies issued or renewed on or
19 after January 1, 2008. Sections 3 and 4 apply to applications for nonfleet private
20 passenger motor vehicle insurance made on and after January 1, 2008. Sections 6 and 7 of
21 this act apply to applications for registration and certificate of title made on or after
22 January 1, 2008. Section 2 of this act is effective when it becomes law and applies to
23 motor vehicle insurance policies issued or renewed on or after that date. The remainder of
24 this act is effective when it becomes law.



HOUSE BILL 729: Penalties for Insurance Rate Evasion Fraud.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 16, 2007
Introduced by:	Reps. Goforth, Holliman	Summary by:	Tim Hovis
Version:	PCS to Second Edition H729-CSR-G-51[v.15]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 729 makes it a Class 3 misdemeanor for an applicant for auto insurance to intentionally deceive the insurer by misrepresenting whether the applicant is eligible to be insured in North Carolina, or if the person assists, solicits, or conspires with another to fraudulently obtain auto insurance. It would also require insurers to take reasonable steps to verify that the information provided by the applicant is correct as to the applicant's address or the address where the applicant's automobile is principally garaged. If an applicant provides fraudulent information as to his or her status, the insurer may refuse to issue a policy, cancel or refuse to renew a policy, or deny coverage for any bodily injury or property damage. The Proposed Committee Substitute would place an obligation upon insurers and their employees, as well as all persons licensed under Chapter 58 to notify the Commissioner of Insurance of any violations of these requirements.*

The bill gives authority to the Joint Legislative Transportation Oversight Committee to study issues related to automobile insurance rate evasion and report its findings and any recommended legislation to the 2008 Regular Session of the 2007 General Assembly.

BILL ANALYSIS: To obtain motor vehicle insurance in this State, the owner of a vehicle must qualify as an "eligible risk." **Section 1** of the bill would amend the definition of "eligible risk" to include, for the purposes of obtaining nonfleet private passenger motor vehicle insurance, nonresidents who own a motor vehicle registered and principally garaged in this State. Eligible risk would also include nonresident members of the United States Armed Forces stationed in this State, and out-of-state college students enrolled in school in this State.

This section also includes a definition of "principally garaged" to mean a vehicle garaged for six or months of the current or preceding year in this State on property lawfully occupied by the owner of the vehicle. There is currently no definition of principally garaged in the statutes.

Section 2 authorizes an insurer to terminate insurance if the named insured is no longer an eligible risk.

Section 3 creates a new statute in Article 2 of Chapter 58 of the General Statutes to make it a Class 3 misdemeanor punishable by law and by a fine of not more than \$1,000 for each violation for an applicant for auto insurance to intentionally deceive an insurer by misrepresenting whether the applicant is an eligible risk to be insured in North Carolina, or if the person assists, solicits, or conspires with another to fraudulently obtain auto insurance by making false statements or providing misleading information as to an applicant's status as an eligible risk. The bill would require insurers to take reasonable steps to verify that the information provided by the applicant is correct as to the applicant's address or the address where the applicant's automobile is principally garaged. A list of items showing proof of residency or of eligible risk status is provided in this section.

House Bill 729

Page 2

In the absence of actual malice, an insurer and its authorized representative, producers, the Commissioner, and the respective agents and employees of these persons is not subject to civil liability as a result of any statement provided under this section.

This section would also require insurers to maintain safeguards at the point of sale, renewal, and claim to identify misrepresentations by applicants as to this information.

If an applicant provides fraudulent information as to the applicant's status, the insurer may refuse to issue a policy, cancel or refuse to renew a policy, or deny coverage for any bodily injury or property damage. A defendant convicted under this section is subject to civil suit for compensatory damages, including treble damages if a pattern of violations is shown.

Section 4 requires insurers and their employees or representative and any other person licensed under Chapter 58 to notify the Commissioner of Insurance of any violations of these requirements.

Section 5 gives authority to the Joint Legislative Transportation Oversight Committee to study issues related to automobile insurance rate evasion and report its findings and any recommended legislation to the 2008 Regular Session of the 2007 General Assembly.

Sections 6 and 7 amend the current law governing vehicle registration and certificates of title to require applicant's to include certain statements on their application verifying that the applicant is an eligible risk, understands the consequences of providing incorrect or fraudulent information, and will inform an his or her insurer before the next policy renewal if the owner ceases to be an eligible risk. (This language is set out twice to address possible changes to the statute made by other legislation which is ratified but not yet signed by the Governor.)

EFFECTIVE DATE: Sections 1, 3, 4, 6, and 7 become effective January 1, 2008. Section 1 applies to policies issued or renewed on or after that date. Sections 3 and 4 apply to applications for nonfleet motor vehicle insurance made on or after that date. Section 6 and 7 apply to applications for registration and certificate of title made on or after that date. The remainder of the act is effective when it becomes law. Section 2 of the act applies to policies issued or renewed on or after the effective date.

H0729e2-SMRG-CSRG-51v15

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 729*

Committee Substitute Favorable 5/17/07

PROPOSED COMMITTEE SUBSTITUTE H729-PCS30512-RG-51

Short Title: Penalties for Insurance Rate Evasion Fraud.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO ADDRESS NONFLEET PRIVATE PASSENGER MOTOR VEHICLE
INSURANCE RATE EVASION FRAUD AND TO AUTHORIZE THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY
THE ISSUES RELATED TO AUTOMOBILE INSURANCE RATE EVASION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-37-1 reads as rewritten:

"§ 58-37-1. Definitions.

As used in this Article:

- (1) "Cede" or "cession" means the act of transferring the risk of loss from the individual insurer to all insurers through the operation of the facility.
- (2) Repealed by Session Laws 1991, c. 720, s. 6.
- (3) "Company" means each member of the Facility.
- (4) "Eligible risk"-~~risk,~~ for the purpose of motor vehicle insurance other than nonfleet private passenger motor vehicle insurance, ~~means a person; means:~~
 - a. A person who is a resident of this State who owns a motor vehicle registered or principally garaged in this State ~~or who State;~~
 - b. A person who has a valid driver's license in this State ~~or who State;~~
 - c. A person who is required to file proof of financial responsibility pursuant to ~~under~~ Article 9A or 13 of the ~~North Carolina Motor Vehicle Code Chapter 20 of the General Statutes~~ in order to register his or her motor vehicle or to obtain a driver's license in this State; ~~or~~

- 1 d. ~~a—A~~ nonresident of this State who owns a motor vehicle
2 registered or principally garaged in this ~~State, or the State; or~~
3 e. The State and its agencies and cities, counties, towns and
4 municipal corporations in this State and their ~~agencies, provided~~
5 ~~however, that agencies.~~

6 However, no person shall be deemed an eligible risk if timely payment
7 of premium is not tendered or if there is a valid unsatisfied judgment
8 of record against such person for recovery of amounts due for motor
9 vehicle insurance premiums and such person has not been discharged
10 from paying said judgment, or if such person does not furnish the
11 information necessary to effect insurance.

12 (4a) "Eligible risk," for the purpose of nonfleet private passenger motor
13 vehicle insurance, means:

- 14 a. A resident of this State who owns a motor vehicle registered or
15 principally garaged in this State;
16 b. A resident of this State and who has a valid driver's license
17 issued by this State;
18 c. A person who is required to file proof of financial responsibility
19 under Article 9A or 13 of Chapter 20 of the General Statutes in
20 order to register his or her vehicle or to obtain a driver's license
21 in this State;
22 d. A nonresident of this State who owns a motor vehicle registered
23 and principally garaged in this State;
24 e. A nonresident of the State who is one of the following:
25 1. A member of the United States armed forces stationed in
26 this State who intends to return to his or her home state;
27 2. The spouse of a nonresident member of the United States
28 armed forces stationed in this State who intends to return
29 to his or her home state;
30 3. An out-of-state student who intends to return to his or
31 her home state upon completion of his or her time as a
32 student enrolled in school in this State; or
33 f. The State and its agencies and cities, counties, towns, and
34 municipal corporations in this State and their agencies.

35 However, no person shall be deemed an eligible risk if timely payment
36 or premium is not tendered or if there is a valid unsatisfied judgment
37 of record against the person for recovery of amounts due for motor
38 vehicle insurance premiums and the person has not been discharged
39 from paying the judgment or if the person does not furnish the
40 information necessary to effect insurance.

41 (5) "Facility" means the North Carolina Motor Vehicle Reinsurance
42 Facility established pursuant to the provisions of under this Article.

43 (6) "Motor vehicle" means every self-propelled vehicle that is designed
44 for use upon a highway, including trailers and semitrailers designed for

1 use with such vehicles (except traction engines, road rollers, farm
2 tractors, tractor cranes, power shovels, and well drillers). "Motor
3 vehicle" also means a motorcycle, as defined in G.S. 20-4.01(27)d.

- 4 (7) "Motor vehicle insurance" means direct insurance against liability
5 arising out of the ownership, operation, maintenance or use of a motor
6 vehicle for bodily injury including death and property damage and
7 includes medical payments and uninsured and underinsured motorist
8 coverages.

9 With respect to motor carriers who are subject to the financial
10 responsibility requirements established under the Motor Carrier Act of
11 1980, the term, "motor vehicle insurance" includes coverage with
12 respect to environmental restoration. As used in this subsection the
13 term, "environmental restoration" means restitution for the loss,
14 damage, or destruction of natural resources arising out of the
15 accidental discharge, dispersal, release, or escape into or upon the
16 land, atmosphere, water course, or body of water of any commodity
17 transported by a motor carrier. Environmental restoration includes the
18 cost of removal and the cost of necessary measures taken to minimize
19 or mitigate damage to human health, the natural environment, fish,
20 shellfish, and wildlife.

- 21 (8) "Person" means every natural person, firm, partnership, association,
22 trust, limited liability company, firm, corporation, government, or
23 governmental agency.

- 24 (9) "Plan of operation" means the plan of operation approved pursuant to
25 the provisions of this Article.

- 26 (10) Repealed by Session Laws 1977, c. 828, s. 10.

- 27 (11) "Principally garaged" means the vehicle is garaged for six or more
28 months of the current or preceding year on property in this State which
29 is owned, leased, or otherwise lawfully occupied by the owner of the
30 vehicle."

31 **SECTION 2.** G.S. 58-37-50 reads as rewritten:

32 **"§ 58-37-50. Termination of insurance.**

33 No member may terminate insurance to the extent that cession of a particular type of
34 coverage and limits is available under the provisions of this Article except for the
35 following reasons:

- 36 (1) Nonpayment of premium when due to the insurer or producing agent.
37 (2) The named insured has become a nonresident of this State and would
38 not otherwise be entitled to insurance on submission of new
39 application under this Article.
40 (3) A member company has terminated an agency contract for reasons
41 other than the quality of the agent's insureds or the agent has
42 terminated the contract and such agent represented the company in
43 taking the original application for insurance.

(4) When the insurance contract has been cancelled pursuant to a power of attorney given a company licensed pursuant to the provisions of G.S. 58-35-5.

(5) The named insured, at the time of renewal, fails to meet the requirements contained in the corporate charter, articles of incorporation, and/or bylaws of the insurer, when the insurer is a company organized for the sole purpose of providing members of an organization with insurance policies in North Carolina.

(6) The named insured is no longer an eligible risk under G.S. 58-37-1."

SECTION 3. Article 2 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-2-164. Rate evasion fraud; prevention programs.

(a) The following definitions apply in this section:

(1) "Applicant" means one or more persons applying for the issuance or renewal of an auto insurance policy.

(2) "Auto insurance" means nonfleet private passenger motor vehicle insurance.

(3) "Eligible applicant" means a person who is an eligible risk under G.S. 58-37-1(4a).

(4) "Insurer" means a member of the North Carolina Rate Bureau that is licensed to write and is writing auto insurance in this State.

(5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).

(6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S. 58-40-10(1).

(b) It shall be a Class 3 misdemeanor for any person who, with the intent to deceive an insurer, does any of the following:

(1) Present or cause to be presented a written or oral statement in support of an application for auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

(2) Assist, abet, solicit, or conspire with another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for auto insurance or for vehicle registration pursuant to G.S. 20-52(a)(4) and (a)(5), if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than one thousand dollars (\$1,000) for each violation.

(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to

1 verify residency or eligible risk status or may rely upon the agent verification of
2 residency or eligible risk status to meet the insurer's verification obligations under this
3 section. The agent shall retain copies of any items obtained under this section as
4 required under the record retention rules adopted by the Commissioner and in
5 accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section
6 by obtaining reliable proof of North Carolina residency from the applicant or the
7 applicant's status as an eligible risk. Reliable proof of residency or eligible risk includes
8 but is not limited to:

- 9 (1) A pay stub with the payee's address.
- 10 (2) A utility bill showing the address of the applicant-payor.
- 11 (3) A lease for an apartment, house, modular unit, or manufactured home
12 with a North Carolina address signed by the applicant.
- 13 (4) A receipt for personal property taxes paid.
- 14 (5) A receipt for real property taxes paid to a North Carolina locality.
- 15 (6) A monthly or quarterly financial statement from a North Carolina
16 regulated financial institution.
- 17 (7) A valid unexpired North Carolina driver's license
- 18 (8) A matricula consular or substantially similar document issued by the
19 Mexican Consulate for North Carolina.
- 20 (9) A document similar to that described in subdivision (8) of this section,
21 issued by the consulate or embassy of another country that would be
22 accepted by the North Carolina Division of Motor Vehicles as set forth
23 in G.S. 20-7(b4)(9).
- 24 (10) A valid North Carolina vehicle registration.
- 25 (11) A valid military ID.
- 26 (12) A valid student ID for a North Carolina school or university.

27 (d) In the absence of actual malice, neither an insurer, the authorized
28 representative of the insurer, a producer, the Commissioner, an organization of which
29 the Commissioner is a member, the North Carolina Reinsurance Facility, nor the
30 respective employees and agents of such persons acting on behalf of such persons shall
31 be subject to civil liability as a result of any statement or information provided or action
32 taken pursuant to this section.

33 (e) In any action brought against a person that may have immunity under
34 subsection (d) of this section for making any statement required by this section or for
35 providing any information relating to any statement that may be requested by the
36 Commissioner, the party bringing the action shall plead specifically in any allegation
37 that subsection (d) of this section does not apply because the person making the
38 statement or providing the information did so with actual malice. Subsections (d) and
39 (e) of this section do not abrogate or modify any existing statutory or common law
40 privileges or immunities.

41 (f) Every insurer shall maintain safeguards within its auto insurance business at
42 the point of sale, renewal, and claim to identify misrepresentations by applicants
43 regarding their addresses and the places their motor vehicles are garaged. Identified
44 misrepresentations are subject to the requirements of Article 2 of this Chapter.

(g) If an applicant provides false and misleading information as to the applicant's or any named insured's status as an eligible applicant and that fraudulent information makes the applicant or any named insured appear to be an eligible applicant when that person is in fact not an eligible applicant, the insurer may do any or all of the following:

(1) Refuse to issue a policy.

(2) Cancel or refuse to renew a policy that has been issued.

(3) Deny coverage for any claim arising out of bodily injury or property damage suffered by the applicant. This subdivision does not apply to innocent third parties.

(h) In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into evidence against the defendant and shall establish the liability of the defendant as a matter of law for such damages, fees, or costs as may be proven. The court may award the prevailing party compensatory damages including but not limited to any costs, losses, expenses, and attorneys' fees incurred in connection with any false statement of eligible risk status made in an application for insurance or incurred in connection with any claim submitted under a policy obtained as a result of a false statement of status as an eligible risk, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages."

SECTION 4. G.S. 58-2-163 reads as rewritten:

"§ 58-2-163. Report to Commissioner.

Whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any other person has violated G.S. 58-2-161, 58-2-162, 58-2-164, 58-2-180, 58-8-1, ~~or~~ 58-24-180(e), or whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any entity licensed by the Commissioner is financially impaired, it is the duty of such person, upon acquiring such knowledge, to notify the Commissioner and provide the Commissioner with a complete statement of all of the relevant facts and circumstances. Such report is a privileged communication, and when made without actual malice does not subject the person making the same to any liability whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of any licensee who willfully fails to comply with this section."

SECTION 5. The Joint Legislative Transportation Oversight Committee may study the issues related to automobile insurance rate evasion (S.B. 795 – Jenkins/H.B. 729 – Holliman) and report its findings, together with any recommended legislation, to the 2008 Session of the 2007 General Assembly upon its convening.

SECTION 6. G.S. 20-52(a) reads as rewritten:

"(a) An owner of a vehicle subject to registration must apply to the Division for a certificate of title, a registration plate, and a registration card for the vehicle. To apply, an owner must complete an application ~~form~~ provided by the Division. The application

1 ~~form~~ must request all of the following information and may request other information
2 the Division considers necessary:

3 (1) The owner's name.

4 (1a) If the owner is an individual, the following information:

5 a. The owner's mailing address and residence address.

6 b. The owner's North Carolina drivers license number or North
7 Carolina special identification card number.

8 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
9 the address of the entity.

10 (2) A description of the vehicle, including the following:

11 a. The make, model, type of body, and vehicle identification
12 number of the vehicle.

13 b. Whether the vehicle is new or used and, if a new vehicle, the
14 date the manufacturer or dealer sold the vehicle to the owner
15 and the date the manufacturer or dealer delivered the vehicle to
16 the owner.

17 (3) A statement of the owner's title and of all liens upon the vehicle,
18 including the names and addresses of all lienholders in the order of
19 their priority, and the date and nature of each lien.

20 (4) A statement that the owner is an eligible risk for insurance coverage as
21 defined in G.S. 58-37-1.

22 (5) For registration and certificate of title for a nonfleet private passenger
23 motor vehicle, a statement that providing incorrect or false and
24 misleading information as to the owner's status as an eligible risk can
25 result in criminal prosecution and the denial of insurance coverage for
26 any loss of the owner under any insurance policies for which
27 application is made if the owner provides false and misleading
28 information as to eligible risk status.

29 (6) For registration and certificate of title for a nonfleet private passenger
30 motor vehicle, a statement that the owner will inform the insurer
31 before the next policy renewal if the owner ceases to be an eligible
32 risk.

33 The application ~~form~~ must contain the disclosures concerning the request for an
34 applicant's social security number required by section 7 of the federal Privacy Act of
35 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
36 may disclose a social security number obtained under this subsection only for the
37 purpose of administering the motor vehicle registration laws and may not disclose the
38 social security number for any other purpose. The social security number of a person
39 who applies to register a vehicle or of a person in whose name a vehicle is registered is
40 therefore not a public record. A violation of the disclosure restrictions is punishable as
41 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

42 **SECTION 7.** If Senate Bill 1350, 2007 Regular Session, becomes law,
43 Section 6 of this act is repealed, and, effective January 1, 2008, G.S. 20-52(a) as
44 amended by Section 2 of Senate Bill 1350, reads as rewritten:

1 "(a) An owner of a vehicle subject to registration must apply to the Division for a
2 certificate of title, a registration plate, and a registration card for the vehicle. To apply,
3 an owner must complete an application ~~form~~ provided by the Division. The application
4 ~~form~~ must request all of the following information and may request other information
5 the Division considers necessary:

6 (1) The owner's name.

7 (1a) If the owner is an individual, the following information:

8 a. The owner's mailing address and residence address.

9 b. One of the following:

10 1. The owner's North Carolina drivers license number or
11 North Carolina special identification card number.

12 2. The owner's home state drivers license number or home
13 state special identification card number and valid active
14 duty military identification card if the owner is a person
15 on active military duty and is stationed in this State.

16 3. The owner's home state drivers license number or home
17 state special identification card number and proof of
18 enrollment in a school in this State if the owner is a
19 permanent resident of another state but is currently
20 enrolled in a school in this State.

21 4. The owner's home state drivers license number or home
22 state special identification card number if the owner or
23 co-owner intends to principally garage the vehicle in this
24 State. "Principally garage" means the vehicle is garaged
25 for six or more months of the year on property in this
26 State which is owned, leased, or otherwise lawfully
27 occupied by the owner of the vehicle.

28 c. For vehicles that have more than one owner, only one co-owner
29 is required to provide the information requested under
30 sub-subdivision b. of this subdivision.

31 (1b) If the owner is a firm, a partnership, a corporation, or another entity,
32 the address of the entity.

33 (2) A description of the vehicle, including the following:

34 a. The make, model, type of body, and vehicle identification
35 number of the vehicle.

36 b. Whether the vehicle is new or used and, if a new vehicle, the
37 date the manufacturer or dealer sold the vehicle to the owner
38 and the date the manufacturer or dealer delivered the vehicle to
39 the owner.

40 (3) A statement of the owner's title and of all liens upon the vehicle,
41 including the names and addresses of all lienholders in the order of
42 their priority, and the date and nature of each lien.

43 (4) A statement that the owner is an eligible risk for insurance coverage as
44 defined in G.S. 58-37-1.

- 1 (5) For registration and certificate of title for a nonfleet private passenger
2 motor vehicle, a statement that providing incorrect or false and
3 misleading information as to the owner's status as an eligible risk can
4 result in criminal prosecution and the denial of insurance coverage for
5 any loss of the owner under any insurance policies for which
6 application is made if the owner provides false and misleading
7 information as to eligible risk status.
8 (6) For registration and certificate of title for a nonfleet private passenger
9 motor vehicle, a statement that the owner will inform the insurer
10 before the next policy renewal if the owner ceases to be an eligible
11 risk.

12 The application ~~form~~ must contain the disclosures concerning the request for an
13 applicant's social security number required by section 7 of the federal Privacy Act of
14 1974, Pub. L. No. 93-579. In accordance with 42 U.S.C. 405(c)(2)(C)(v), the Division
15 may disclose a social security number obtained under this subsection only for the
16 purpose of administering the motor vehicle registration laws and may not disclose the
17 social security number for any other purpose. The social security number of a person
18 who applies to register a vehicle or of a person in whose name a vehicle is registered is
19 therefore not a public record. A violation of the disclosure restrictions is punishable as
20 provided in 42 U.S.C. 405(c)(2)(C)(vii)."

21 **SECTION 8.** Sections 1, 3, 4, 6, and 7 of this act become effective January
22 1, 2008. Section 1 applies to motor vehicle insurance policies issued or renewed on or
23 after January 1, 2008. Sections 3 and 4 apply to applications for nonfleet private
24 passenger motor vehicle insurance made on and after January 1, 2008. Sections 6 and 7 of
25 this act apply to applications for registration and certificate of title made on or after
26 January 1, 2008. Section 2 of this act is effective when it becomes law and applies to
27 motor vehicle insurance policies issued or renewed on or after that date. The remainder of
28 this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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1

SENATE BILL 668

Short Title: Energy Conservation in State Buildings.

(Public)

Sponsors: Senators Cowell; Albertson, Atwater, Berger of Franklin, Brock, Dalton, Foriest, Garrou, Goss, Graham, Hartsell, Jones, Kinnaird, Malone, Nesbitt, Pittenger, Purcell, Queen, Snow, Stevens, and Swindell.

Referred to: Commerce, Small Business and Entrepreneurship.

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE CONSERVATION OF ENERGY AND WATER USE
IN STATE, UNIVERSITY, AND COMMUNITY COLLEGE BUILDINGS.

The General Assembly of North Carolina enacts:

PART I. REQUIRE NEW STATE, UNIVERSITY, AND COMMUNITY
COLLEGE BUILDINGS AND MAJOR RENOVATIONS OF THESE
BUILDINGS TO BE CONSTRUCTED USING HIGH-PERFORMANCE
CONSTRUCTION STANDARDS AND PROHIBIT THE STATE FROM
ACQUIRING BY PURCHASE BUILDINGS THAT DID NOT MEET
STANDARDS FOR ENERGY EFFICIENCY THAT APPLIED TO THE
CONSTRUCTION OR RENOVATION OF COMPARABLE STATE
BUILDINGS WHEN THE BUILDINGS UNDER CONSIDERATION FOR
PURCHASE WERE CONSTRUCTED OR RECEIVED A MAJOR
RENOVATION.

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a
new Article to read:

"Article 8C.

"High-Performance Public Buildings.

"§ 143-135.35. Findings; legislative intent.

(a) The General Assembly finds that public buildings can be built and renovated using high-performance methods that save money, improve employee and student performance, and make employees and students more productive. High-performance public buildings are proven to cut energy and utility costs, increase performance and productivity, and reduce absenteeism.

(b) It is the intent of the General Assembly that State-owned buildings, The University of North Carolina, and the North Carolina Community College System be improved by adopting recognized standards for high-performance public buildings and allowing flexible methods and choices in how to achieve those standards. The General Assembly also intends that State agencies, The University of North Carolina, and the North Carolina Community College System shall document costs and savings to monitor the program under this Article and ensure that economic and environmental goals are achieved each year, and that an independent performance review be conducted to evaluate the program under this Article and determine the extent to which the results intended by this Article are being met. It is the intent and an established goal of the Leadership in Energy and Environmental Design (LEED) program, as authored by the United States Green Building Council, to increase demand for building materials and products that are extracted and manufactured locally, thereby reducing the environmental impacts, and to support the local economy. Accordingly, it is the intent of the General Assembly to emphasize this defined goal and establish a priority to use North Carolina-based resources, building materials, products, industries, manufacturers, and other businesses to provide economic development to North Carolina and to meet the objectives of this Article.

"§ 143-135.36. Definitions.

As used in this Article, the following definitions apply:

- (1) "ASHRAE 90.1-2004" means the energy efficiency standard developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) and adopted by ASHRAE in 2004.
- (2) "Department" means the Department of Administration.
- (3) "High-performance public buildings" means high-performance public buildings designed, constructed, and certified to a standard as identified in this Article.
- (4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- (5) "LEED silver standard" means the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) green building rating standard for new buildings, as amended, and referred to as the LEED-NB Silver Standard or the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) green building rating standard for existing buildings, as amended, and referred to as the LEED-EB Silver Standard, whichever is applicable to the project.
- (6) "Major facility project" means a construction project larger than 5,000 gross square feet of occupied or conditioned space as defined in the North Carolina State Building Code or a building renovation project when the cost is greater than fifty percent (50%) of the insurance value

1 and the project is larger than 5,000 gross square feet of occupied or
2 conditioned space as defined in the North Carolina State Building
3 Code. "Major facility project" does not include any of the following:
4 transmitter buildings, pumping stations, research facilities primarily
5 used for sponsored laboratory experimentation, laboratory research, or
6 laboratory training in research methods, or other similar building types
7 as determined by the Department.

8 (7) "Public agency" means every State office, officer, board, department,
9 and commission and institutions of higher education.

10 **"§ 143-135.37. Standard for major facilities; reports by agencies and the**
11 **Department.**

12 (a) All major facility projects of public agencies shall be designed, constructed,
13 and certified to at least the LEED silver standard that is in effect at the schematic design
14 phase of the project and, to the extent the LEED silver standard would result in greater
15 consumption of energy than would result using the standard under ASHRAE 90.1-2004,
16 the energy consuming components of the project shall be designed and constructed to at
17 least the standard under ASHRAE 90.1-2004. In addition, for new construction, the
18 water systems shall be designed and constructed to eliminate the use of potable water
19 for irrigation, and, for major renovations that involve water systems, the renovation
20 shall be designed and constructed to either eliminate the use of potable water for
21 irrigation or reduce water consumption in the building by twenty percent (20%) based
22 on water consumption for the preceding fiscal year. This subsection applies to major
23 facility projects that have not entered the schematic design phase prior to the effective
24 date of this section and to the extent appropriate LEED silver standards exist for that
25 type of building or facility.

26 (b) Public agencies shall monitor and document ongoing operating savings
27 resulting from major facility projects designed, constructed, and certified as required
28 under this section. These public agencies shall report annually to the Department on
29 major facility projects and operating savings.

30 (c) To be able to monitor and document ongoing operating savings as required
31 under subsection (b) of this section, all utilities going into any building that is the
32 subject of a project under this Article shall be metered.

33 (d) The Department shall consolidate the reports required in subsection (b) of this
34 section and any report from the State Building Commission under G.S. 143-135.40 into
35 one report and report to the Chairs of the General Government Appropriations
36 Subcommittees of both the Senate and the House of Representatives, the Environmental
37 Review Commission, and the Joint Legislative Commission on Governmental
38 Operations by November 1 of each year beginning in 2008. In its report, the Department
39 shall also report on the implementation of this Article, including reasons why the LEED
40 standard was not used for the reason that it would not be practicable in accordance with
41 G.S. 143-135.40. The Department shall make recommendations regarding the ongoing
42 implementation of this Article, including a discussion of incentives and disincentives
43 related to implementing this Article.

1 "§ 143-135.38. Guidelines for administering Article; other considerations
2 regarding project proposals.

3 (a) The Department, in consultation with affected public agencies, shall develop
4 and issue guidelines to implement this Article for public agencies. The purpose of the
5 guidelines is to define a procedure and method for employing and verifying activities
6 necessary for certification to at least the LEED silver standard for major facility
7 projects.

8 (b) Major facility projects designed to meet standards identified in this Article
9 shall include building commissioning as a critical cost-saving part of the construction
10 process. This process shall include input from the project design and construction teams
11 and the project ownership representatives.

12 (c) As provided in the request for proposals for construction services, the public
13 agency may hold a preproposal conference for prospective bidders to discuss
14 compliance with, and achievement of, standards identified in this Article for prospective
15 respondents.

16 (d) The Department shall create a high-performance buildings advisory
17 committee comprised of representatives from the design and construction industry
18 involved in public works contracting, personnel from the affected public agencies
19 responsible for overseeing public works projects, and others at the Department's
20 discretion to provide advice on implementing this Article. Among other duties, the
21 advisory committee shall make recommendations regarding an education and training
22 process and an ongoing evaluation or feedback process to help the Department
23 implement this Article.

24 (e) The Department shall review the advisory committee's recommendations
25 under subsection (d) of this section regarding education and training. The Department
26 shall develop one level of education and training requirements for the chief financial
27 officer of each public agency that is appropriate for the chief financial officer's level of
28 involvement in projects under this Article and that includes training, approved by the
29 U.S. Green Building Council, regarding LEED certification. The Department shall
30 develop, for each public agency that is responsible for the payment of the agency's
31 utilities, another higher level of education and training requirements for the facility
32 manager of the agency that is appropriate for the facility manager's level of involvement
33 in projects under this Article and that includes training, approved by the U.S. Green
34 Building Council, regarding LEED certification. This level of education and training
35 shall also be a requirement for the capital project coordinator of an agency involved in a
36 project under this Article. The Department shall develop a highest level of education
37 and training requirements for the architects and mechanical design engineers that are
38 involved in the design of projects under this Article that is appropriate for their level of
39 involvement in these projects and that includes training, approved by the U.S. Green
40 Building Council, regarding LEED certification.

41 (f) The Department may adopt rules to implement this Article. The Department
42 may adopt architectural or engineering standards as needed to implement this Article.

43 "§ 143-135.39. Liability for failure to meet standard.

1 A member of the design or construction teams shall not be held liable for the failure
2 of a major facility project to meet the LEED silver standard or other LEED standard
3 established for the project as long as a good faith attempt was made to achieve the
4 LEED standard set for the project.

5 **"§ 143-135.40. Use of other standard when LEED silver standard not practicable.**

6 When the Department, public agency, and the design team determine the LEED
7 silver standard or the ASHRAE 90.1-2004 standard to be not practicable for a major
8 facility project, then it must be determined by the State Building Commission if the
9 standard is not practicable for that major facility project. If the State Building
10 Commission determines the standard is not practicable for that major facility project,
11 the State Building Commission shall determine if any LEED standard is practicable for
12 the design and construction for that major facility project. If the LEED silver standard
13 or the ASHRAE 90.1-2004 standard is not followed for that project or if another LEED
14 standard is followed, the public agency shall report this information and the reasons to
15 the Department in its report under G.S. 143-135.37, and the State Building Commission
16 shall report this information and the reasons to the Department."

17 **SECTION 1.2.** G.S. 115D-20 is amended by adding a new subdivision to
18 read:

19 "(14) To comply with the design and construction requirements for
20 high-performance public buildings under Article 8C of Chapter 143 of
21 the General Statutes."

22 **SECTION 1.3.** The Department of Administration shall monitor the
23 development of construction or other energy efficiency standards to determine whether
24 there is a standard that the Department and the high-performance building advisory
25 committee, established under G.S. 143-135.38, as enacted in Section 1.1 of this act,
26 determine would better fulfill the intent of Article 8C of Chapter 143 of the General
27 Statutes, as enacted by Section 1.1 of this act, to achieve energy efficiency and
28 increased energy savings in major facility projects, as defined in G.S. 143-135.36, as
29 enacted in Section 1.1 of this act, in buildings of the State, The University of North
30 Carolina, and the North Carolina Community College System than the LEED silver
31 standard defined in G.S. 143-135.36, as enacted in Section 1.1 of this act, and, if so,
32 whether Article 8C of Chapter 143 of the General Statutes, as enacted in Section 1.1 of
33 this act, should be amended to provide for the use of this standard rather than the LEED
34 silver standard under that Article. Specifically, the Department of Administration shall
35 monitor the development of improved energy efficiency standards developed by the
36 American Society of Heating, Refrigerating and Air-Conditioning Engineers, the
37 ASHRAE standards, and monitor whether the State Building Code Council adopts
38 improved ASHRAE standards or any other energy efficiency standards for inclusion in
39 the State Building Code under Article 9 of Chapter 143 of the General Statutes that
40 result in greater energy efficiency and increased energy savings in major facility
41 projects in State, University System, and community college buildings than the LEED
42 silver standard. No later than January 1, 2009, and again January 1, 2010, the
43 Department of Administration shall report to the Chairs of the General Government
44 Appropriations Subcommittees of both the Senate and the House of Representatives, the

1 Environmental Review Commission, and the Joint Legislative Commission on
2 Governmental Operations on the results of its monitoring under this section, including
3 any recommendations for administrative or legislative proposals.

4 **SECTION 1.4.(a)** The Department of Administration shall conduct a
5 performance review of the high-performance buildings program established under
6 Article 8C of Chapter 143 of the General Statutes, as enacted by Section 1.1 of this act.
7 The performance review shall include at least all of the following:

- 8 (1) Identification of the costs of implementing high-performance building
9 standards in the design and construction of major facility projects
10 subject to that Article.
- 11 (2) Identification of operating savings attributable to the implementation
12 of high-performance building standards, including, but not limited to,
13 savings in energy, utility, and maintenance costs.
- 14 (3) Identification of any impacts on employee productivity from using
15 high-performance buildings standards.
- 16 (4) Evaluation of the effectiveness of the high-performance building
17 standards established under this Article.
- 18 (5) Any recommendations for any changes in those standards that may be
19 supported by the Department's findings.

20 **SECTION 1.4.(b)** No later than December 1, 2010, the Department of
21 Administration shall make a preliminary report of its findings under its performance
22 review under subsection (a) of this section and its recommendations and, on or before
23 July 1, 2011, a final report to the Chairs of the General Government Appropriations
24 Subcommittees of both the Senate and the House of Representatives, the Environmental
25 Review Commission, and the Joint Legislative Commission on Governmental
26 Operations.

27 **SECTION 1.5.** Article 6 of Chapter 146 of the General Statutes is amended
28 by adding a new section to read:

29 **"§ 146-23.2. Purchase of buildings constructed or renovated to a certain energy**
30 **efficiency standard.**

31 (a) A State agency shall not acquire by purchase any building unless the building
32 was designed and constructed to at least the same standard for energy efficiency that the
33 design and construction of a comparable State building was required to meet at the time
34 the building under consideration for purchase was constructed. Further, a State agency
35 shall not acquire by purchase any building that had a major renovation unless the major
36 renovation of the building was designed and constructed to at least the same standard
37 for energy efficiency that the design and construction of a major renovation of a
38 comparable State building was required to meet at the time the building under
39 consideration for purchase was renovated.

40 (b) This section does not apply to the purchase of a building having historic,
41 architectural, or cultural significance under G.S. 143-23.1. This section does not apply
42 to buildings that are acquired by devise or bequest."
43

PART II. RETROFIT EXISTING STATE, UNIVERSITY, AND COMMUNITY COLLEGE BUILDINGS WITH ENERGY CONSERVATION MEASURES THAT HAVE A HIGH RETURN IN ENERGY SAVINGS AND THAT REQUIRE NO SIGNIFICANT EXPENDITURE OF FUNDS AND APPROPRIATE FUNDS TO A RESERVE FOR THE COSTS OF THESE RETROFITS.

SECTION 2.1.(a) The Department of Administration shall administer and oversee the implementation of a program whereby all of the following energy conservation measures, as defined in G.S. 143-64.17, shall be fully implemented no later than July 1, 2009, in each building owned by the State, The University of North Carolina, or the North Carolina Community College System:

- (1) **Lighting Systems.** – The installation of exit signs that employ light-emitting diode (LED) technology; the replacement of incandescent light bulbs with compact fluorescent light bulbs; and where appropriate, as determined by the Department of Administration, the installation of occupancy sensors or optical sensors.
- (2) **Water Systems.** – The installation of aerators in sink faucets that reduce the flow of water to a rate of no more than five-tenths gallons per minute (.5 g.p.m.); the installation of shower heads that reduce the flow of water to a rate of no more than one and five-tenths gallons per minute (1.5 g.p.m.); where appropriate, as determined by the Department of Administration, the resetting of hot water heaters to a water temperature of 120 degrees; the training of staff to monitor the use of irrigation systems and to base the use of the system on the moisture content of the soil, and either the elimination of potable water for irrigation or the reduction of water consumption in the building by twenty percent (20%) based on water consumption for the 2006-2007 fiscal year.
- (3) **Heating, Ventilation, and Air-conditioning (HVAC) Systems.** – For HVAC equipment that is subject to replacement, the review of the specifications for the replacement HVAC equipment to ensure that it is not oversized; and, for building automation systems that are programmable, the training to ensure that these systems are properly programmed.
- (4) **Minor Equipment.** – For minor motorized equipment that is subject to replacement, the replacement of minor equipment with equipment that has premium efficiency motors. For purposes of this subdivision, 'premium efficiency motor' means a motor that meets or exceeds a set of minimum full-load efficiency standards developed by the National Electrical Manufacturers Association (NEMA), the NEMA standards.

SECTION 2.1.(b) Consistent with G.S. 150B-2(8a)h., the Department of Administration shall develop or revise its architectural and engineering standards to provide assistance in determining which energy conservation measures are best suited to

1 the unique characteristics of each building and in determining the specifications for the
2 energy conservation measures under this section. The development or revision of the
3 architectural and engineering standards shall be completed by October 1, 2007.

4 SECTION 2.1.(c) Prior to implementing this section and no later than
5 September 1, 2007, the Department of Administration shall report to the Joint
6 Legislative Commission on Governmental Operations and the Environmental Review
7 Commission on its plan to implement this section.

8 SECTION 2.1.(d) In order to protect the integrity of historic buildings, this
9 section does not apply to the extent it would require the implementation of measures to
10 conserve energy, water, or other utility use that conflict with respect to any property
11 eligible for, nominated to, or entered on the National Register of Historic Places,
12 pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic
13 building located within an historic district as provided in Chapter 160A or 153A of the
14 General Statutes; any historic building listed, owned, or under the jurisdiction of an
15 historic properties commission as provided in Chapter 160A or 153A; or any historic
16 property owned by the State or assisted by the State.

17 SECTION 2.2.(a) There is appropriated from the General Fund to the Office
18 of State Budget and Management the sum of three million dollars (\$3,000,000) for the
19 2007-2008 fiscal year to be placed in a reserve. No later than September 1, 2007, the
20 Office of State Budget and Management shall develop a plan to allocate funds from this
21 reserve to the State agencies, the Board of Governors of The University of North
22 Carolina, and the State Board of Community Colleges for the costs of implementing the
23 energy conservation measures as directed under this part. Subject to subsection (b) of
24 this section, the Office of State Budget and Management shall make allocations from
25 this reserve to the State agencies, the Board of Governors of The University of North
26 Carolina, and the State Board of Community Colleges in conformance with its
27 allocation plan under this subsection.

28 SECTION 2.2.(b) No State agency, constituent institution of The University
29 of North Carolina, or community college as defined in G.S. 115D-2 shall receive any
30 funds under subsection (a) of this section unless it has submitted its most recent plan for
31 its management of energy, water, and other utility use that is due under G.S. 143-64.12,
32 as amended by Section 3.1 of this act.

33
34 PART III. REQUIRE THE DEPARTMENT OF ADMINISTRATION TO
35 CONDUCT ENERGY AUDITS EVERY THREE YEARS FOR EACH STATE,
36 UNIVERSITY, AND COMMUNITY COLLEGE BUILDING; REQUIRE
37 ANNUAL UPDATES OF STATE AND AGENCY PLANS TO MANAGE
38 ENERGY, WATER, AND OTHER UTILITY USE; BRING THE NORTH
39 CAROLINA COMMUNITY COLLEGE SYSTEM WITHIN THE PURVIEW OF
40 PART 1 OF ARTICLE 3B OF CHAPTER 143 OF THE GENERAL STATUTES,
41 WHICH ADDRESSES ENERGY POLICY AND LIFE-CYCLE COST
42 ANALYSES; AND APPROPRIATE FUNDS TO ESTABLISH AN ADDITIONAL
43 FCAP TEAM AND TO CREATE A RESERVE FOR COMMISSIONING

1 EXISTING STATE, UNIVERSITY, AND COMMUNITY COLLEGE
2 BUILDINGS TO REDUCE ENERGY CONSUMPTION.
3

4 SECTION 3.1.(a) G.S. 143-64.12 reads as rewritten:

5 "§ 143-64.12. Authority and duties of the Department; State agencies.

6 (a) The Department of Administration shall develop a comprehensive program to
7 manage energy, water, and other utility use for State government and shall update this
8 program annually. Each State agency and each State institution of higher learning shall
9 develop and implement a management plan that is consistent with the State's
10 comprehensive program under this subsection to manage energy, water, and other utility
11 use. Each State agency shall update its management plan annually.

12 (a1) ~~The General Assembly authorizes and directs that State agencies and State~~
13 ~~institutions of higher learning shall carry out the construction and renovation of State~~
14 ~~facilities, under their jurisdiction facilities of State agencies and State institutions of~~
15 ~~higher learning in such a manner as to further the policy declared herein, ensuring set~~
16 ~~forth under this section and to ensure the use of life-cycle cost analyses and practices to~~
17 ~~conserve energy, water, and other utilities.~~

18 (b) The Department of Administration shall develop and implement policies,
19 procedures, and standards to ensure that State purchasing practices improve efficiency
20 regarding energy, water, and other utility use and take the cost of the product over the
21 economic life of the product into consideration. The Department of Administration shall
22 adopt and implement Building Energy Design Guidelines. These guidelines shall
23 include energy-use goals and standards, economic assumptions for life-cycle cost
24 analysis, and other criteria on building systems and technologies. The Department of
25 Administration shall modify the design criteria for construction and renovation of
26 facilities of State agencies or State institutions of higher learning to require that a
27 life-cycle cost analysis be conducted pursuant to G.S. 143-64.15.

28 (b1) The Department of Administration, as part of the Facilities Condition and
29 Assessment Program, shall identify and recommend energy conservation maintenance
30 and operating procedures that are designed to reduce energy consumption within the
31 facility of a State agency or State institution of higher learning and that require no
32 significant expenditure of funds. ~~State departments, institutions, or agencies~~ Every State
33 agency and State institution of higher learning shall implement these recommendations.
34 Where energy management equipment is proposed for State facilities, any facility of a
35 State agency or a State institution of higher learning, the maximum interchangeability
36 and compatibility of equipment components shall be required. As part of the Facilities
37 Condition and Assessment Program under this section, the Department of
38 Administration shall develop an energy audit and a procedure for conducting energy
39 audits. Every three years the Department shall conduct an energy audit for each facility
40 of a State agency or State institution of higher learning.

41 ~~The Department of Administration shall develop a comprehensive program to~~
42 ~~manage energy, water, and other utility use for State government.~~

43 ~~Each State agency shall develop and implement a management plan that is consistent~~
44 ~~with the State's comprehensive program to manage energy, water, and other utility use.~~

(c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

(h) When conducting an energy audit under this section, the Department of Administration shall identify and recommend any facility of a State agency or State institution of higher learning as suitable for building commissioning to reduce energy consumption within the facility or as suitable for installing an energy savings measure pursuant to a guaranteed energy savings contract under Part 2 of this Article.

(i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may adopt architectural and engineering standards to implement this subsection."

SECTION 3.1.(b) G.S. 143-64.10 reads as rewritten:

"§ 143-64.10. Findings; policy.

(a) The General Assembly finds all of the following:

- (1) That the State shall take a leadership role in aggressively undertaking the conservation of energy, water, and other utilities in North Carolina.
- (2) That State facilities and the facilities of the State universities and community colleges have a significant impact on the State's consumption of energy, water, and other utilities.
- (3) That practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of energy, water, and other utilities.
- (4) That the cost of the energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial cost.
- (5) That the cost of energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects the consumption of energy, water, or other utilities.
- (6) That State government shall undertake a program to reduce the use of energy, water, and other utilities in ~~State~~ State, university, and community college facilities and equipment in those facilities in order to provide its citizens with an example of energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of ~~State~~ State, university, and community college facilities and in the purchase, operation, and maintenance of equipment for ~~State~~ these facilities."

SECTION 3.1.(c) G.S. 143-64.11 is amended by adding a new subdivision to read:

"(10) 'State institution of higher learning' means any constituent institution of The University of North Carolina, any regional institution as

defined in G.S. 115D-2, and any community college as defined in G.S. 115D-2."

SECTION 3.1.(d) G.S. 143-64.11(7) reads as rewritten:

"(7) "State agency" means the State of North Carolina or any board, bureau, commission, department, ~~institution~~, or agency of the State."

SECTION 3.1.(e) G.S. 143-64.16 reads as rewritten:

"§ 143-64.16. Application of Part.

The provisions of this Part shall not apply to municipalities or counties, nor to any agency or department of any municipality or ~~county~~; ~~provided, however, this Part shall apply to any board of a community college. Community college is defined in G.S. 115D-2(2)-county.~~"

SECTION 3.2. The Department of Administration shall establish and train an additional team to examine existing facilities of State agencies and State institutions of higher learning to identify and recommend energy conservation maintenance and operating procedures designed to reduce energy consumption and to conduct energy audits and identify a facility as suitable for building commissioning or for installing an energy savings measure under the Facilities Condition and Assessment Program (FCAP) under G.S. 143-64.12, as amended by Section 3.1 of this act.

SECTION 3.3. There is appropriated from the General Fund to the Department of Administration the sum of two hundred sixty-five thousand seven hundred eighty-seven dollars (\$265,787) for the 2007-2008 fiscal year to establish and support three Building System Engineer II positions to comprise the additional team the Department of Administration is directed to establish under Section 3.2 of this act and the sum of two hundred fifty-two thousand two hundred eighty-seven dollars (\$252,287) for the 2008-2009 fiscal year to continue and support these three positions.

SECTION 3.4.(a) There is appropriated from the General Fund to the Office of State Budget and Management the sum of five million dollars (\$5,000,000) for the 2007-2008 fiscal year to be placed in a reserve. No later than September 1, 2007, the Office of State Budget and Management shall develop a plan to allocate funds from this reserve to the State agencies, the Board of Governors of The University of North Carolina, and the State Board of Community Colleges for the costs of commissioning existing buildings of the State, The University of North Carolina, and the North Carolina Community College System for existing buildings that are identified as suitable for building commissioning to reduce energy consumption under G.S. 143-64.12, as amended by Section 3.1 of this act. Subject to subsection (b) of this act, the Office of State Budget and Management shall make allocations from this reserve to the State agencies, the Board of Governors of The University of North Carolina, and the State Board of Community Colleges in conformance with its allocation plan under this subsection.

SECTION 3.4.(b) No State agency, constituent institution of The University of North Carolina, or community college as defined in G.S. 115D-2 shall receive any funds under subsection (a) of this section unless it has submitted its most recent plan for its management of energy, water, and other utility use that is due under G.S. 143-64.12, as amended by Section 3.1 of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE BILL 668
PROPOSED COMMITTEE SUBSTITUTE S668-CSR-39 [v.5]

7/16/2007 7:17:43 PM

Short Title: Energy Conservation in State Buildings.

(Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED
AN ACT TO PROMOTE THE CONSERVATION OF ENERGY AND WATER USE
IN STATE, UNIVERSITY AND COMMUNITY COLLEGE BUILDINGS.
The General Assembly of North Carolina enacts:

**PART I. REQUIRE NEW STATE, UNIVERSITY, AND COMMUNITY
COLLEGE BUILDINGS AND MAJOR RENOVATIONS OF THESE
BUILDINGS TO BE CONSTRUCTED USING ENERGY AND WATER
EFFICIENT CONSTRUCTION STANDARDS AND PROHIBIT THE STATE
FROM ACQUIRING BY PURCHASE BUILDINGS THAT DID NOT MEET
STANDARDS FOR ENERGY EFFICIENCY THAT APPLIED TO THE
CONSTRUCTION OR RENOVATION OF COMPARABLE STATE
BUILDINGS WHEN THE BUILDINGS UNDER CONSIDERATION FOR
PURCHASE WERE CONSTRUCTED OR RECEIVED A MAJOR
RENOVATION.**

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a
new Article to read:

"Article 8C.

"Energy and Water Efficient Public Buildings

"§ 143-135.35. Findings; legislative intent.

(a) The General Assembly finds that public buildings can be built and renovated
using sustainable, energy efficient methods that save money, reduce negative
environmental impacts, improve employee and student performance, and make
employees and students more productive. The main objectives of sustainable, energy
efficient design are to avoid resource depletion of energy, water, and raw materials;
prevent environmental degradation caused by facilities and infrastructure throughout
their life cycle; and create buildings that are livable, comfortable, safe, and productive.

(b) It is the intent of the General Assembly that State-owned buildings, The University of North Carolina, and the North Carolina Community College System be improved by establishing specific performance criteria and goals for sustainable, energy efficient public buildings based upon recognized, consensus standards with scientifically proven basis and demonstrated performance. The General Assembly also intends that State agencies, The University of North Carolina, and the North Carolina Community College System shall perform after-construction measurement and verification of costs and savings to confirm that the performance goals of this Article are met and ensure that economic and environmental goals are achieved. Also, it is the intent of the General Assembly to establish a priority to use North Carolina-based resources, building materials, products, industries, manufacturers, and businesses to provide economic development to North Carolina and to meet the objectives of this Article.

"§ 143-135.36. Definitions.

As used in this Article, the following definitions apply:

- (1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
- (2) "Department" means the Department of Administration.
- (3) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- (4) "Major facility" means a construction project larger than 20,000 gross square feet of occupied or conditioned space, as defined in the *North Carolina State Building Code*, or a building renovation project when the cost is greater than fifty percent (50%) of the insurance value and the project is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the *North Carolina State Building Code*, whose construction is funded in whole or in part by the State of North Carolina. "Major facility" does not include the following: transmitter buildings or pumping stations.
- (5) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.
- (6) "Sustainable, energy efficient public buildings" means public buildings that, by complying with this Article, are the most economical energy and water efficiency for that building type.

"§ 143-135.37. Standard for major facilities; reports by agencies and the Department.

(a) All major facility projects of public agencies shall be designed, constructed, and certified to at least a 30% greater energy efficiency than the standard under ASHRAE 90.1-2004. For major renovations a 20% greater energy efficiency standard than ASHRAE 90.1-2004 shall be used. In addition, for new construction, the water systems shall be designed and constructed to use a minimum of 20 percent less potable water than the indoor water use baseline calculated for the building after meeting the

1 fixture performance requirements required by the 2006 North Carolina Plumbing Code.
2 Outdoor potable water or harvested ground water consumption shall be reduced by a
3 minimum of 50 percent over that consumed by conventional means through use water
4 efficient landscape materials and irrigation strategies, including water reuse and
5 recycling. This subsection applies to major facility projects that have not entered the
6 schematic design phase prior to the effective date of this section.

7 (a) For the purposes of this Article, any exceptions or special standards for
8 specific types of buildings or building facilities found in ASHRAE 90.1-2004 are
9 included in the ASHRAE 90.1-2004 standard under subsection (a) of this section.

10 (b) Commissioning for Major Facilities. Building and/or system commissioning
11 practices, tailored to the size and complexity of the building and its system components,
12 shall be employed in order to verify performance of building components and systems
13 and help ensure that design requirements are met upon completion of construction.

14 (c) Measurement and Verification for Major Facilities.

15 (1) Building level owner's meters for electricity, natural gas, fuel oil,
16 water, etc., in accordance with United States Department of Energy
17 (DOE) guidelines issued under Section 103 of the Energy Policy Act
18 of 2005 shall be installed. The public agency and the designers shall
19 compare metered data from the first twelve months of building
20 operation with the energy design target(s) and report that performance
21 to the State Construction Office.

22 (2) If the average building energy or water consumption over the one year
23 period following the date of beneficial occupancy is 85% or less than
24 the performance goals established by these standards, the designer,
25 owner agency, contractor, Contract Manager at Risk, and
26 commissioning agent shall investigate, determine the cause of the
27 shortfall, and recommend corrections or modifications to meet
28 performance goals.

29 (d) The Department shall consolidate the reports required in this section and any
30 report from the State Building Commission under G.S. 143-135.39 into one report and
31 report to the Chairs of the General Government Appropriations Subcommittees of both
32 the Senate and the House of Representatives, the Environmental Review Commission,
33 and the Joint Legislative Commission on Governmental Operations by November 1 of
34 each year beginning in 2008. In its report, the Department shall also report on the
35 implementation of this Article including reasons why the standards required in
36 subsection (a) of this section were not used for the reason that it would not be
37 practicable in accordance with G.S. 143-135.39. The Department shall make
38 recommendations regarding the ongoing implementation of this Article, including a
39 discussion of incentives and disincentives related to implementing this Article.

40 **"§ 143-135.38. Guidelines for administering Article; other considerations**
41 **regarding project proposals.**

42 (a) The Department, in consultation with affected public agencies, shall develop
43 and issue policies and technical guidelines to implement this Article for public agencies.
44 The purpose of these policies and guidelines is to define procedures and methods for

1 complying with the criteria and performance goals for major facility projects defined by
2 § 143-135.37.

3 (b) As provided in the request for proposals for construction services, the public
4 agency may hold a preproposal conference for prospective bidders to discuss
5 compliance with, and achievement of, standards identified in this Article for prospective
6 respondents.

7 (c) The Department shall create a sustainable, energy efficient buildings
8 advisory committee comprised of representatives from the design and construction
9 industry involved in public works contracting, personnel from the affected public
10 agencies responsible for overseeing public works projects, and others at the
11 Department's discretion to provide advice on implementing this Article. Among other
12 duties, the advisory committee shall make recommendations regarding an education and
13 training process for stakeholders and an ongoing evaluation or feedback process to help
14 the Department implement this Article. The advisory committee may also make
15 recommendations to the Department regarding water efficiency requirements and
16 energy efficiency requirements.

17 (d) The Department shall review the advisory committee's recommendations
18 under subsection (c) of this section regarding education and training. The Department
19 shall develop one level of education and training requirements for the chief financial
20 officer of each public agency that is appropriate for the chief financial officer's level of
21 involvement in projects under this Article. The Department shall develop, for each
22 public agency that is responsible for the payment of the agency's utilities, another higher
23 level of education and training requirements for the facility manager of the agency that
24 is appropriate for the facility manager's level of involvement in projects under this
25 Article. This level of education and training shall also be a requirement for the capital
26 project coordinator of an agency involved in a project under this Article. The
27 Department shall develop a highest level of education and training requirements for the
28 architects and mechanical design engineers that are involved in the design of projects
29 under this Article that is appropriate for their level of involvement in these projects.

30 (e) The Department may adopt rules to implement this Article. The Department
31 may adopt architectural or engineering standards as needed to implement this Article.
32 **§ 143-135.39. Use of other standard when ASHRAE standard not practicable.**

33 When the Department, public agency, and the design team determine the ASHRAE
34 90.1-2004 standard to be not practicable for a major facility project, then it must be
35 determined by the State Building Commission if the standard is not practicable for that
36 major facility project. If the State Building Commission determines the standard is not
37 practicable for that major facility project, the State Building Commission shall
38 determine which standard is practicable for the design and construction for that major
39 facility project. If the ASHRAE 90.1-2004 standard is not followed for that project, the
40 public agency shall report this information and the reasons to the Department in its
41 report under G.S. 143-135.37, and the State Building Commission shall report this
42 information and the reasons to the Department."

43 **SECTION 1.2.** G.S. 115D-20 is amended by adding a new subdivision to
44 read:

1 "(14) To comply with the design and construction requirements for energy and
2 water efficient public buildings under Article 8C of Chapter 143 of the General
3 Statutes."

4 **SECTION 1.3.** The Department of Administration shall monitor the
5 development of construction or other energy efficiency standards to determine whether
6 there is a standard that the Department and the energy efficient buildings advisory
7 committee, established under G.S. 143-135.38, as enacted in Section 1.1 of this act,
8 determine would better fulfill the intent of Article 8C of Chapter 143 of the General
9 Statutes, as enacted by Section 1.1 of this act, to achieve energy efficiency and
10 increased energy savings in major facility projects, as defined in G.S. 143-135.36, as
11 enacted in Section 1.1 of this act, in buildings of the State, The University of North
12 Carolina, and the North Carolina Community College System than the ASHRAE
13 90.1-2004 standard defined in G.S. 143-135.36, as enacted in Section 1.1 of this act,
14 and, if so, whether Article 8C of Chapter 143 of the General Statutes, as enacted in
15 Section 1.1 of this act, should be amended to provide for the use of this standard rather
16 than the ASHRAE 90.1-2004 standard under that Article. Specifically, the Department
17 of Administration shall monitor the development of improved energy efficiency
18 standards developed by the American Society of Heating, Refrigerating and
19 Air-Conditioning Engineers, the ASHRAE standards, and monitor whether the State
20 Building Code Council adopts improved ASHRAE standards or any other energy
21 efficiency standards for inclusion in the State Building Code under Article 9 of Chapter
22 143 of the General Statutes that result in greater energy efficiency and increased energy
23 savings in major facility projects in State, University System, and community college
24 buildings. No later than January 1, 2009, and again January 1, 2010, the Department of
25 Administration shall report to the Chairs of the General Government Appropriations
26 Subcommittees of both the Senate and the House of Representatives, the Environmental
27 Review Commission, and the Joint Legislative Commission on Governmental
28 Operations on the results of its monitoring under this section, including any
29 recommendations for administrative or legislative proposals.

30 **SECTION 1.4.(a)** The Department of Administration shall conduct a
31 performance review of the energy and water efficient buildings program established
32 under Article 8C of Chapter 143 of the General Statutes, as enacted by Section 1.1 of
33 this act. The performance review shall include at least all of the following:

- 34 (1) Identification of the costs of implementing energy and water efficient
35 building standards in the design and construction of major facility
36 projects subject to that Article.
- 37 (2) Identification of operating savings attributable to the implementation
38 of energy and water efficient building standards, including, but not
39 limited to, savings in energy, water, utility, and maintenance costs.
- 40 (3) Identification of any impacts on employee productivity from using
41 energy and water efficient buildings standards.
- 42 (4) Evaluation of the effectiveness of the energy and water efficient
43 building standards established under this Article.

- (5) Any recommendations for any changes in those standards that may be supported by the Department's findings.

SECTION 1.4.(b) No later than December 1, 2010, the Department of Administration shall make a preliminary report of its findings under its performance review under subsection (a) of this section and its recommendations and, on or before December 1, 2011, a final report to the Chairs of the General Government Appropriations Subcommittees of both the Senate and the House of Representatives, the Environmental Review Commission, and the Joint Legislative Commission on Governmental Operations.

SECTION 1.5. Article 6 of Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-23.2. Purchase of buildings constructed or renovated to a certain energy and water efficiency standard.

(a) A State agency shall not acquire by purchase any building unless the building was designed and constructed to at least the same standard for energy and water efficiency that the design and construction of a comparable building was required to meet under applicable State law or local ordinance at the time the building under consideration for purchase was constructed.

(b) A State agency shall not acquire by purchase any building that had a major renovation unless the renovation was performed to at least the same standard for energy and water efficiency that the design and construction of a major renovation of a comparable building was required to meet under applicable State law or local ordinance at the time the building under consideration for purchase was renovated.

(c) This section does not apply to the purchase of a building having historic, architectural, or cultural significance under G.S. 143-23.1. This section does not apply to buildings that are acquired by devise or bequest."

PART II. RETROFIT EXISTING STATE AND UNIVERSITY BUILDINGS WITH ENERGY CONSERVATION MEASURES THAT HAVE A HIGH RETURN IN ENERGY SAVINGS AND THAT REQUIRE NO SIGNIFICANT EXPENDITURE OF FUNDS AND APPROPRIATE FUNDS TO A RESERVE FOR THE COSTS OF THESE RETROFITS.

SECTION 2.1.(a) The Department of Administration shall administer and oversee the implementation of a program whereby all of the following energy conservation measures, as defined in G.S. 143-64.17, shall be fully implemented no later than December 31, 2009, in each building owned by the State, The University of North Carolina, or the North Carolina Community College System:

- (1) Lighting Systems. – The installation of exit signs that employ light-emitting diode (LED) technology; the replacement of incandescent light bulbs with compact fluorescent light bulbs; and where appropriate, as determined by the Department of Administration, the installation of occupancy sensors or optical sensors.

- 1 (2) Water Systems. – The installation of aerators in sink faucets that
2 reduce the flow of water to a rate of no more than five-tenths gallons
3 per minute (.5 g.p.m.); the installation of shower heads that reduce the
4 flow of water to a rate of no more than one and five-tenths gallons per
5 minute (1.5 g.p.m.); where appropriate, as determined by the
6 Department of Administration, the resetting of hot water heaters to a
7 water temperature of 120 degrees; the training of staff to monitor the
8 use of irrigation systems and to base the use of the system on the
9 moisture content of the soil, and either the elimination of potable water
10 for irrigation or the reduction of water consumption in the building by
11 twenty percent (20%) based on water consumption for the 2002-2003
12 fiscal year.
- 13 (3) Heating, Ventilation, and Air-conditioning (HVAC) Systems. – For
14 HVAC equipment that is subject to replacement, the review of the
15 specifications for the replacement HVAC equipment to ensure that it is
16 not oversized; and, for building automation systems that are
17 programmable, the training to ensure that these systems are properly
18 programmed.
- 19 (4) Minor Equipment. – For minor motorized equipment that is subject to
20 replacement, the replacement of minor equipment with equipment that
21 has premium efficiency motors. For purposes of this subdivision,
22 'premium efficiency motor' means a motor that meets or exceeds a set
23 of minimum full-load efficiency standards developed by the National
24 Electrical Manufacturers Association (NEMA), the NEMA standards.
- 25 (5) For retrofit of existing buildings that require no significant expenditure of
26 funds: Disconnect lamps in drink vending machines. Use power save feature
27 on computers, monitors, copiers, fax machines and other office equipment.
28 Purchase only Energy Star office equipment and appliances.

29 **SECTION 2.1(b)** Consistent with G.S. 150B-2(8a)h., the Department of
30 Administration shall develop or revise its architectural and engineering standards to
31 provide assistance in determining which energy conservation measures are best suited to
32 the unique characteristics of each building and in determining the specifications for the
33 energy conservation measures under this section. The development or revision of the
34 architectural and engineering standards shall be completed by February 1, 2008.

35 **SECTION 2.1(c)** Prior to implementing this section and no later than
36 February 1, 2008, the Department of Administration shall report to the Joint Legislative
37 Commission on Governmental Operations and the Environmental Review Commission
38 on its plan to implement this section.

39 **SECTION 2.1(d)** In order to protect the integrity of historic buildings, this
40 section does not apply to the extent it would require the implementation of measures to
41 conserve energy, water, or other utility use that conflict with respect to any property
42 eligible for, nominated to, or entered on the National Register of Historic Places,
43 pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic
44 building located within an historic district as provided in Chapter 160A or 153A of the

1 General Statutes; any historic building listed, owned, or under the jurisdiction of an
2 historic properties commission as provided in Chapter 160A or 153A; or any historic
3 property owned by the State or assisted by the State.

4 **SECTION 2.2(a)** There is appropriated from the General Fund to the Office
5 of State Budget and Management the sum of three million dollars (\$3,000,000) for the
6 2007-2008 fiscal year to be placed in a reserve. No later than February 1, 2008, the
7 Office of State Budget and Management shall develop a plan to allocate funds from this
8 reserve to the State agencies and the Board of Governors of The University of North
9 Carolina for the costs of implementing the energy conservation measures as directed
10 under this part. Subject to subsection (b) of this section, the Office of State Budget and
11 Management shall make allocations from this reserve to the State agencies and the
12 Board of Governors of The University of North in conformance with its allocation plan
13 under this subsection.

14 **SECTION 2.2(b)** No State agency or constituent institution of The
15 University of North Carolina shall receive any funds under subsection (a) of this
16 section unless it has submitted its most recent plan for its management of energy, water,
17 and other utility use that is due under G.S. 143-64.12, as amended by Section 3.1 of this
18 act.

19
20 **PART III. REQUIRE THE DEPARTMENT OF ADMINISTRATION TO**
21 **CONDUCT ENERGY AUDITS EVERY FIVE YEARS FOR EACH STATE AND**
22 **UNIVERSITY BUILDING; REQUIRE ANNUAL UPDATES OF STATE AND**
23 **UNIVERSITY PLANS TO MANAGE ENERGY, WATER, AND OTHER**
24 **UTILITY USE; AND APPROPRIATE FUNDS TO ESTABLISH AN**
25 **ADDITIONAL FCAP TEAM AND TO CREATE A RESERVE FOR**
26 **COMMISSIONING EXISTING STATE AND UNIVERSITY BUILDINGS TO**
27 **REDUCE ENERGY CONSUMPTION.**

28
29 **SECTION 3.1(a)** G.S. 143-64.12 reads as rewritten:

30 **"§ 143-64.12. Authority and duties of ~~State agencies, the Department; State~~**
31 **agencies and State institutions of higher learning.**

32 (a) The Department of Administration through the State Energy Office shall
33 develop a comprehensive program to manage energy, water, and other utility use for
34 State agencies and institutions of higher learning and shall update this program
35 annually. Each State agency and State institution of higher learning shall develop and
36 implement a management plan that is consistent with the State's comprehensive
37 program under this subsection to manage energy, water, and other utility use. The
38 energy consumption per gross square foot for all State buildings in total shall be reduced
39 by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 compared to the
40 2003 baseline. Each State agency and State institution of higher learning shall update its
41 management plan annually and include strategies for supporting this reduction. Each
42 Community College shall submit to the State Energy Office an annual written report of
43 utility consumption and costs.

1 ~~(a)~~ ~~The General Assembly authorizes and directs that State agencies and State~~
2 ~~institutions of higher learning shall carry out the construction and renovation of State~~
3 ~~facilities, under their jurisdiction facilities in such a manner as to further the policy~~
4 ~~declared herein, ensuring set forth under this section and to ensure the use of life-cycle~~
5 ~~cost analyses and practices to conserve energy, water, and other utilities.~~

6 (b) The Department of Administration shall develop and implement policies,
7 procedures, and standards to ensure that State purchasing practices improve efficiency
8 regarding energy, water, and other utility use and take the cost of the product over the
9 economic life of the product into consideration. The Department of Administration shall
10 adopt and implement Building Energy Design Guidelines. These guidelines shall
11 include energy-use goals and standards, economic assumptions for life-cycle cost
12 analysis, and other criteria on building systems and technologies. The Department of
13 Administration shall modify the design criteria for construction and renovation of
14 facilities of State buildings and State institution of higher learning buildings to require
15 that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15.

16 (b1) The Department of Administration, as part of the Facilities Condition and
17 Assessment Program, shall identify and recommend energy conservation maintenance
18 and operating procedures that are designed to reduce energy consumption within the
19 facility of a State agency or State institution of higher learning and that require no
20 significant expenditure of funds. ~~State departments, institutions, or agencies~~ Every State
21 agency or State institution of higher learning shall implement these recommendations.
22 Where energy management equipment is proposed for State facilities, any facility of a
23 State agency or institution of higher learning, the maximum interchangeability and
24 compatibility of equipment components shall be required. As part of the Facilities
25 Condition and Assessment Program under this section, the Department of
26 Administration shall develop an energy audit and a procedure for conducting energy
27 audits. Every five years the Department shall conduct an energy audit for each State
28 agency or State institution of higher learning.

29 ~~The Department of Administration shall develop a comprehensive program to~~
30 ~~manage energy, water, and other utility use for State government. Each State agency~~
31 ~~shall develop and implement a management plan that is consistent with the State's~~
32 ~~comprehensive program to manage energy, water, and other utility use.~~

33 (c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

34 (h) When conducting an energy audit under this section, the Department of
35 Administration shall identify and recommend any facility of a State agency or State
36 institution of higher learning as suitable for building commissioning to reduce energy
37 consumption within the facility or as suitable for installing an energy savings measure
38 pursuant to a guaranteed energy savings contract under Part 2 of this Article.

39 (i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may
40 adopt architectural and engineering standards to implement this section."

41 **SECTION 3.1.(b)** G.S. 143-64.10 reads as rewritten:

42 **"§ 143-64.10. Findings; policy.**

43 (a) The General Assembly finds all of the following:

- (1) That the State shall take a leadership role in aggressively undertaking the conservation of energy, water, and other utilities in North Carolina.
- (2) That State facilities and facilities of the State institutions of higher learning have a significant impact on the State's consumption of energy, water, and other utilities.
- (3) That practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of energy, water, and other utilities.
- (4) That the cost of the energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial cost.
- (5) That the cost of energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects the consumption of energy, water, or other utilities.
- (6) That State government shall undertake a program to reduce the use of energy, water, and other utilities in ~~State~~ State and institution of higher learning facilities and equipment in those facilities in order to provide its citizens with an example of energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of ~~State~~ State and institution of higher learning facilities and in the purchase, operation, and maintenance of equipment for ~~State~~ these facilities."

SECTION 3.1.(c) G.S. 143-64.11 is amended by adding a new subdivision to read:

"(10) 'State institution of higher learning' means any constituent institution of The University of North Carolina."

SECTION 3.2. The Department of Administration shall establish and train an additional team to examine existing facilities of State agencies and State institutions of higher learning to identify and recommend energy conservation maintenance and operating procedures designed to reduce energy consumption and to conduct energy audits and identify a facility as suitable for building commissioning or for installing an energy savings measure under the Facilities Condition Assessment Program (FCAP) under G.S. 143-64.12, as amended by Section 3.1 of this act.

SECTION 3.3 There is appropriated from the General Fund to the Department of Administration the sum of two hundred sixty-five thousand seven hundred eighty-seven dollars (\$265,787) for the 2007-2008 fiscal year to establish and support three Building System Engineer II positions to comprise the additional team the

1 Department of Administration is directed to establish under Section 3.2 of this act and
2 the sum of two hundred fifty-two thousand two hundred eighty-seven dollars (\$252,287)
3 for the 2008-2009 fiscal year to continue and support these three positions.

4 **SECTION 3.4.(a)** There is appropriated from the General Fund to the Office
5 of State Budget and Management the sum of five million dollars (\$5,000,000) for the
6 2007-2008 fiscal year to be placed in a reserve. No later than February 1, 2008, the
7 Office of State Budget and Management shall develop a plan to allocate funds from this
8 reserve to State agencies and the Board of Governors of The University of North
9 Carolina for the costs of commissioning existing buildings that are identified as suitable
10 for building commissioning to reduce energy consumption under G.S. 143-64.12, as
11 amended by Section 3.1 of this act. Subject to subsection (b) of this act, the Office of
12 State Budget and Management shall make allocations from this reserve to State agencies
13 and the Board of Governors of The University of North Carolina in conformance with
14 its allocation plan under this subsection.

15 **SECTION 3.4.(b)** No State agency or institution of The University of North
16 Carolina shall receive any funds under subsection (a) of this section unless it has
17 submitted its most recent plan for its management of energy, water, and other utility use
18 that is due under G.S. 143-64.12, as amended by Section 3.1 of this act.

19
20 **PART IV. REQUIRE LIFE-CYCLE COST ANALYSES TO BE COMMENCED**
21 **AND CERTIFIED AT THE SCHEMATIC DESIGN PHASE OF**
22 **CONSTRUCTION OR RENOVATION PROJECTS AND TO BE UPDATED,**
23 **AMENDED, AND RECERTIFIED AS NEEDED AT LATER PHASES OF**
24 **CONSTRUCTION; AND APPROPRIATE FUNDS TO ESTABLISH A**
25 **POSITION IN THE DEPARTMENT OF ADMINISTRATION DEDICATED TO**
26 **CONDUCTING LIFE-CYCLE COST ANALYSES.**

27
28 **SECTION 4.1.** G.S. 143-64.15(a) reads as rewritten:

29 "(a) A life-cycle cost analysis shall be commenced at the schematic design phase
30 of the construction or renovation project, shall be updated or amended as needed at the
31 design development phase, and shall be updated or amended again as needed at the
32 construction document phase. A life-cycle cost analysis shall include, but not be limited
33 to, all of the following elements:

- 34 (1) The coordination, orientation, and positioning of the facility on its
35 physical ~~site~~site.
36 (2) The amount and type of fenestration and the potential for daylighting
37 employed in the ~~facility~~facility.
38 (3) Thermal characteristics of materials and the amount of insulation
39 incorporated into the facility ~~design~~design.
40 (4) The variable occupancy and operating conditions of the facility,
41 including illumination ~~levels~~and levels.
42 (5) Architectural features that affect the consumption of energy, water,
43 and other utilities."

44 **SECTION 4.2.** G.S. 143-64.15A reads as rewritten:

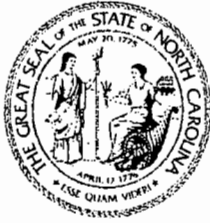
1 **"§ 143-64.15A. Certification of life-cycle cost analysis.**

2 ~~All State agencies under the jurisdiction of the Department of Administration. Each~~
3 ~~State agency and each State institution of higher learning performing a life-cycle cost~~
4 ~~analysis for the purpose of constructing or renovating any State facility or facility of a~~
5 ~~State institution of higher learning shall, prior to selecting a design option or advertising~~
6 ~~for bids for construction, submit the life-cycle cost analysis to the Department for~~
7 ~~certification. certification at the schematic design phase and again when it is updated or~~
8 ~~amended as needed in accordance with G.S. 143-64.15. The Department shall review~~
9 ~~the material submitted by the State agency, agency or State institution of higher learning,~~
10 ~~reserve the right to require agencies—an agency or institution to complete additional~~
11 ~~analysis to comply with certification, perform any additional analysis, as necessary, to~~
12 ~~comply with G.S. 143-341(11), and require that all construction or renovation~~
13 ~~conducted by the State agency or State institution of higher learning comply with the~~
14 ~~certification issued by the Department."~~

15 **SECTION 4.3.** There is appropriated from the General Fund to the
16 Department of Administration the sum of one hundred thousand dollars (\$100,000) for
17 the 2007-2008 fiscal year to establish and support a Building System Engineer III
18 position, which position shall be dedicated to conducting life-cycle cost analyses under
19 Part I of Article 3B of Chapter 143 of the General Statutes, as amended by Part III and
20 Part IV of this act and the sum of ninety-five thousand fifty dollars (\$95,050) for the
21 2008-2009 fiscal year to continue and support this position.

22
23 **PART V. EFFECTIVE DATES**

24
25 **SECTION 5.** Sections 2.2, 3.3, 3.4, and 4.3 of this act become effective July
26 1, 2007. The remaining sections of this act become effective December 1, 2007.
27 Sections 1.1 and 1.2 apply to contracts for the design of major facility projects, as
28 defined in G.S. 143-135.36 as enacted in Section 1.1 of this act, that are entered into on
29 or after December 1, 2007. Section 4.1 applies to life cycle cost analyses commenced,
30 and to contracts entered into for life cycle cost analyses, on or after December 1, 2007.
31



SENATE BILL 668: Energy Conservation in State Buildings

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 16, 2007
Introduced by:	Sen. Cowell	Summary by:	Tim Hovis
Version:	PCS to First Edition S668-CSRG-39[v.5]		Committee Counsel

SUMMARY: *Senate Bill 668 creates a new Article 8C in Chapter 143, Energy and Water Efficient Public Buildings to require new State buildings and major renovations of these buildings, including university and community college buildings, to use energy and water efficient construction standards. The bill authorizes the Department of Administration to administer a program implementing energy conservation measures in all existing State, university, and community college buildings and requires the Department to conduct energy audits every five years for State and university buildings and require annual updates of State and agency plans to manage utility use. The bill also requires that a life-cycle cost analysis be commenced and certified at the schematic design phase of construction or renovation projects and be updated, amended and recertified as needed at later phases.*

As introduced, this bill was identical to H1075, as introduced by Reps. Harrison, Carney, Underhill, Thomas, which is currently in House Ways and Means.

BILL ANALYSIS: S668 is divided into four Parts. Each Part is discussed below.

PART I. Creates a new Article 8C in Chapter 143, Energy and Water Efficient Public Buildings, to require new State, university, and community college buildings and major renovations of these buildings to use energy and water efficient construction standards. Prohibits the State from acquiring by purchase buildings that did not meet applicable energy efficiency standards at the time of construction or renovation.

- Included in the definitions section (G.S. 143-135.36), S668 defines "ASHRAE 90.1-2004" as the energy efficiency standard developed by the American Society of Heating, Refrigerating and Air Conditioning Engineers; "Major facility project" means a construction project larger than 20,000 gross square feet of occupied or conditioned space or a building renovation project when the cost is greater than 50% of the insurance value and the project is larger than 20,000 gross square feet of occupied or conditioned space.
- G.S. 143-135.37 requires all major facility projects to be designed, constructed, and certified to at least 30% greater energy efficiency standards than ASHRAE 90.1-2004, and 20% greater energy efficiency for major renovations. Water systems must be designed and constructed to use 20% less potable water than the indoor water use baseline after meeting the 2006 North Carolina plumbing Code. Outdoor potable water or harvested ground water consumption must be reduced by 50% over conventional means. These provisions apply only to major facility projects that have not yet entered the schematic design phase.
- Public agencies must monitor and document ongoing operating savings and report annually to the Department of Administration on these savings. If the average building energy or water consumption over two years following beneficial occupancy is 85% or less than the performance goals established by the applicable standards, the designer,

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owner agency, contractor, Construction Manager at risk and commissioning shall investigate, determine the cause of the shortfall, and recommend corrections or modifications to meet the performance goals. Reports under G.S. 143-135.37 and G.S. 143-135.39 are to be consolidated by the Department into one report by November 1 of each year beginning in 2008 and submitted to the General Government Appropriations Subcommittees, the Environmental Review Commission, and the Joint Legislative Commission on Governmental Operations. The report shall include recommendations on the ongoing implementation of the Article.

- G.S. 143-135.38 authorizes the Department to issue guidelines and adopt rules to implement the Article. Public agencies may hold a preproposal conference for prospective bidders to discuss the standards.
- Requires the Department to create an energy efficient buildings advisory committee to provide advice on the Article's implementation, including recommendations regarding an education and training process on the Article and water and energy efficiency requirements. After reviewing the committee's recommendations, the Department must develop levels of education and training requirements for suitable for each of the following: (1) chief financial officer of a public agency; (2) the facility manager of each public agency responsible for the payment of the agency's utilities; (3) capital project coordinator of a public agency and (4) architects and mechanical design engineers involved in the design of projects under the Article.
- As provided in the new G.S. 143-135.39, when the Department, public agency, and the design team determine that the ASHRAE standard is not practicable, then the State Building Commission must determine if the standard is not practicable and, if not, which standard is practicable. If ASHRAE is not followed, the public agency and the State Building Commission must report this information and the reasons to the Department. (See G.S. 143-135.37)
- The Department must monitor the development of construction or other energy efficiency standards to determine if other standards would better fulfill the intent of the Article. The Department is also specifically charged with following the development of improved energy standards by ASHRAE and whether these standards or any other standard is adopted by the State Building Code Council. The Department must report on its monitoring under this section no later than January 1, 2009 and again on January 1, 2010.
- The Department is also charged with conducting a performance review of the energy and water efficient buildings program identifying costs, savings, impacts on employee productivity and the program's effectiveness and make a preliminary report no later than December 1, 2010 and a final report no later than December 1, 2011.
- G.S. 146-23.2 is amended to prohibit state agencies from purchasing any building, or building that had a major renovation, that was not designed and constructed to meet energy efficiency standards of a comparable State building or renovation of a State building in effect at the time the building was constructed or renovated.

PART II. Authorizes the Department to administer a program retrofitting existing State and university buildings with energy conservation measures that have a high return in energy savings and that require no significant expenditure of funds.

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- Section 2.1(a) of the bill requires the Department of Administration to administer and oversee implementation of a program fully implementing the energy conservation measures defined in G.S. 143-64.17 in each State, university and community college building no later than December 31, 2009. G.S. 143-64.17 defines "energy conservation measure" as a "facility alteration, training, or services related to the operation of a facility, when the alteration, training, or services provide anticipated energy savings." Measures to be implemented under the bill include: (1) lighting system changes; (2) water system changes; (3) review of heating, ventilation, and air-conditioning replacement equipment and training to ensure automation systems programmable and properly programmed; (4) the review of minor motorized equipment subject to replacement to ensure replacement equipment has premium efficiency motors and (5) the following retrofits that require no significant expenditure of funds: (i) disconnection of drink vending machine lamps; (ii) use of power save features on office equipment; and (iii) purchase of Energy Star equipment and appliances.
- Section 2.1(b) requires the Department to develop or revise its architectural and engineering standards by February 1, 2008 to provide assistance in determining which energy conservation measures are best suited to the unique characteristics of each building.
- The Department must report to the Joint legislative Commission on Governmental Operations on its plan to implement this section no later than February 1, 2008.
- Section 2.1(d) provides that this section does not apply to the implementation of energy, water, or other utility conservation measures that conflict with respect to historic properties.
- Section 2.2 (a) appropriates \$3,000,000 from the General Fund to the Office of State Budget and Management for the 2007-2008 fiscal year to be placed in a reserve. The office of State Budget and Management must develop a plan no later than February 1, 2008 to allocate funds from this reserve to State agencies, the Board of Governors, and the State Board of Community Colleges for the costs of implementing energy conservation measures and shall make allocations from the fund in accordance with the plan. No State agency, State university, or community college shall receive any funds unless it has submitted its most recent plan for management of energy, water, and other utilities under G.S. 143-64.12.

PART III. Requires the Department to conduct energy audits every five years for State, and university buildings and require annual updates of State and university plans to manage utility use.

- Section 3.1(a) amends G.S. 143-64.12, *Energy Conservation, Authority and duties of State agencies*, to require the Department to develop a comprehensive program to manage energy, water, and other utility use and update the program annually. Stated goals for all State buildings is to reduce energy use by 20% for all State buildings in total by 2010 and 30% by fiscal year 2015 compared to the 2003 baseline. This section also requires State agencies, and universities to implement and update annually a management plan that is consistent with the State's program under this section.
- The Department is also required to develop an energy audit and a procedure for conducting energy audits. Every five years, the Department must conduct an energy audit

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for each state agency or university facility. When conducting an energy audit, the Department shall identify and recommend any State or university facility as suitable for building commissioning to reduce energy consumption or suitable for the installation of an energy savings measure pursuant to a guaranteed energy savings contract.

- Section 3.3 appropriates \$265,787 for the 2007-2008 fiscal year and \$252,287 for the 2008-2009 fiscal year from the General Fund to the Department to establish and support three Building System Engineer II positions to comprise an additional team as required by Section 3.2 to identify and recommend energy conservation maintenance and operating procedures, conduct energy audits, and identify facilities as suitable for energy reduction measures.
- Section 3.4 appropriates \$5,000,000 from the General Fund to the Office of State Budget and Management to be placed in a reserve. No later than February 1, 2008 the Office of State Budget and Management shall develop a plan to allocate funds for the reduction of energy costs and shall allocate reserves in accordance with the plan. No State agency, State university, or community college shall receive any funds unless it has submitted its most recent plan for management of energy, water, and other utilities under G.S. 143-64.12.

PART IV. Requires life-cycle cost analysis to be commenced and certified at the schematic design phase of construction or renovation projects and be updated, amended and recertified as needed at later phases.

- Sections 4.1 and 4.2 amend G.S. 143-64.15, *Energy Conservation, Life-cycle cost analysis*, and G.S. 143-64.15A, *Certification of life-cycle cost analysis*, to require a life-cycle cost analysis to commence at the schematic phase of each construction or renovation project and updated or amended at the design development phase and the construction document phase. The State agency, university or community college must submit the analysis to the Department for certification at the schematic phase and again as needed.
- Section 4.3 appropriates from the General Fund to the Department \$100,000 for the 2007-2008 fiscal year and \$95,050 for the 2008-2009 fiscal year to establish and support a Building System Engineer III position dedicated to conducting life-cycle cost analyses.

EFFECTIVE DATE: Sections 2.2, 3.3, 3.4, and 4.3 of the act become effective July 1, 2007. The remaining sections become effective December 1, 2007. Sections 1.1 and 1.2 apply to contracts for the design of major facility projects entered into on or after December 1, 2007. Section 4.1 applies to life cycle cost analyses commenced, and to contracts for life cycle cost analyses entered into, on or after December 1, 2007.

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

D

SENATE BILL 668

PROPOSED COMMITTEE SUBSTITUTE S668-PCS15118-RG-39

Short Title: Energy Conservation in State Buildings.

(Public)

Sponsors:

Referred to:

March 12, 2007

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE CONSERVATION OF ENERGY AND WATER USE
IN STATE, UNIVERSITY, AND COMMUNITY COLLEGE BUILDINGS.

The General Assembly of North Carolina enacts:

**PART 1. REQUIRE NEW STATE, UNIVERSITY, AND COMMUNITY
COLLEGE BUILDINGS AND MAJOR RENOVATIONS OF THESE
BUILDINGS TO BE CONSTRUCTED USING ENERGY AND WATER
EFFICIENT CONSTRUCTION STANDARDS AND PROHIBIT THE STATE
FROM ACQUIRING BY PURCHASE BUILDINGS THAT DID NOT MEET
STANDARDS FOR ENERGY EFFICIENCY THAT APPLIED TO THE
CONSTRUCTION OR RENOVATION OF COMPARABLE STATE
BUILDINGS WHEN THE BUILDINGS UNDER CONSIDERATION FOR
PURCHASE WERE CONSTRUCTED OR RECEIVED A MAJOR
RENOVATION.**

SECTION 1.1. Chapter 143 of the General Statutes is amended by adding a
new Article to read:

"Article 8C.

"Energy and Water Efficient Public Buildings.

"§ 143-135.35. Findings; legislative intent.

**(a) The General Assembly finds that public buildings can be built and renovated
using sustainable, energy efficient methods that save money, reduce negative
environmental impacts, improve employee and student performance, and make
employees and students more productive. The main objectives of sustainable, energy
efficient design are to avoid resource depletion of energy, water, and raw materials;
prevent environmental degradation caused by facilities and infrastructure throughout
their life cycle; and create buildings that are livable, comfortable, safe, and productive.**

(b) It is the intent of the General Assembly that State-owned buildings, The University of North Carolina, and the North Carolina Community College System be improved by establishing specific performance criteria and goals for sustainable, energy efficient public buildings based upon recognized, consensus standards with scientifically proven basis and demonstrated performance. The General Assembly also intends that State agencies, The University of North Carolina, and the North Carolina Community College System shall perform after-construction measurement and verification of costs and savings to confirm that the performance goals of this Article are met and ensure that economic and environmental goals are achieved. Also, it is the intent of the General Assembly to establish a priority to use North Carolina-based resources, building materials, products, industries, manufacturers, and businesses to provide economic development to North Carolina and to meet the objectives of this Article.

"§ 143-135.36. Definitions.

As used in this Article, the following definitions apply:

- (1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
- (2) "Department" means the Department of Administration.
- (3) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- (4) "Major facility" means a construction project larger than 20,000 gross square feet of occupied or conditioned space, as defined in the *North Carolina State Building Code*, or a building renovation project when the cost is greater than fifty percent (50%) of the insurance value and the project is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the *North Carolina State Building Code*, whose construction is funded in whole or in part by the State of North Carolina. "Major facility" does not include the following: transmitter buildings or pumping stations.
- (5) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.
- (6) "Sustainable, energy efficient public buildings" means public buildings that, by complying with this Article, are the most economical energy and water efficiency for that building type.

"§ 143-135.37. Standard for major facilities; reports by agencies and the Department.

(a) All major facility projects of public agencies shall be designed, constructed, and certified to at least a thirty percent (30%) greater energy efficiency than the standard under ASHRAE 90.1-2004. For major renovations a twenty percent (20%) greater energy efficiency standard than ASHRAE 90.1-2004 shall be used. In addition, for new construction, the water systems shall be designed and constructed to use a minimum of twenty percent (20%) less potable water than the indoor water use baseline

1 calculated for the building after meeting the fixture performance requirements required
2 by the 2006 *North Carolina Plumbing Code*. Outdoor potable water or harvested ground
3 water consumption shall be reduced by a minimum of fifty percent (50%) over that
4 consumed by conventional means through water use efficient landscape materials and
5 irrigation strategies, including water reuse and recycling. This subsection applies to
6 major facility projects that have not entered the schematic design phase prior to the
7 effective date of this section.

8 (a) For the purposes of this Article, any exceptions or special standards for
9 specific types of buildings or building facilities found in ASHRAE 90.1-2004 are
10 included in the ASHRAE 90.1-2004 standard under subsection (a) of this section.

11 (b) Commissioning for Major Facilities. – Building and/or system
12 commissioning practices, tailored to the size and complexity of the building and its
13 system components, shall be employed in order to verify performance of building
14 components and systems and help ensure that design requirements are met upon
15 completion of construction.

16 (c) Measurement and Verification for Major Facilities.

17 (1) Building level owner's meters for electricity, natural gas, fuel oil,
18 water, etc., in accordance with United States Department of Energy
19 (DOE) guidelines issued under Section 103 of the Energy Policy Act
20 of 2005 shall be installed. The public agency and the designers shall
21 compare metered data from the first 12 months of building operation
22 with the energy design target(s) and report that performance to the
23 State Construction Office.

24 (2) If the average building energy or water consumption over the one year
25 period following the date of beneficial occupancy is eighty-five
26 percent (85%) or less than the performance goals established by these
27 standards, the designer, owner agency, contractor, Contract Manager at
28 Risk, and commissioning agent shall investigate, determine the cause
29 of the shortfall, and recommend corrections or modifications to meet
30 performance goals.

31 (d) The Department shall consolidate the reports required in this section and any
32 report from the State Building Commission under G.S. 143-135.39 into one report and
33 report to the Chairs of the General Government Appropriations Subcommittees of both
34 the Senate and the House of Representatives, the Environmental Review Commission,
35 and the Joint Legislative Commission on Governmental Operations by November 1 of
36 each year beginning in 2008. In its report, the Department shall also report on the
37 implementation of this Article including reasons why the standards required in
38 subsection (a) of this section were not used for the reason that it would not be
39 practicable in accordance with G.S. 143-135.39. The Department shall make
40 recommendations regarding the ongoing implementation of this Article, including a
41 discussion of incentives and disincentives related to implementing this Article.

42 "§ 143-135.38. Guidelines for administering Article; other considerations
43 regarding project proposals.

1 (a) The Department, in consultation with affected public agencies, shall develop
2 and issue policies and technical guidelines to implement this Article for public agencies.
3 The purpose of these policies and guidelines is to define procedures and methods for
4 complying with the criteria and performance goals for major facility projects defined by
5 § 143-135.37.

6 (b) As provided in the request for proposals for construction services, the public
7 agency may hold a preproposal conference for prospective bidders to discuss
8 compliance with, and achievement of, standards identified in this Article for prospective
9 respondents.

10 (c) The Department shall create a sustainable, energy efficient buildings
11 advisory committee comprised of representatives from the design and construction
12 industry involved in public works contracting, personnel from the affected public
13 agencies responsible for overseeing public works projects, and others at the
14 Department's discretion to provide advice on implementing this Article. Among other
15 duties, the advisory committee shall make recommendations regarding an education and
16 training process for stakeholders and an ongoing evaluation or feedback process to help
17 the Department implement this Article. The advisory committee may also make
18 recommendations to the Department regarding water efficiency requirements and
19 energy efficiency requirements.

20 (d) The Department shall review the advisory committee's recommendations
21 under subsection (c) of this section regarding education and training. The Department
22 shall develop one level of education and training requirements for the chief financial
23 officer of each public agency that is appropriate for the chief financial officer's level of
24 involvement in projects under this Article. The Department shall develop, for each
25 public agency that is responsible for the payment of the agency's utilities, another higher
26 level of education and training requirements for the facility manager of the agency that
27 is appropriate for the facility manager's level of involvement in projects under this
28 Article. This level of education and training shall also be a requirement for the capital
29 project coordinator of an agency involved in a project under this Article. The
30 Department shall develop a highest level of education and training requirements for the
31 architects and mechanical design engineers that are involved in the design of projects
32 under this Article that is appropriate for their level of involvement in these projects.

33 (e) The Department may adopt rules to implement this Article. The Department
34 may adopt architectural or engineering standards as needed to implement this Article.

35 **"§ 143-135.39. Use of other standard when ASHRAE standard not practicable.**

36 When the Department, public agency, and the design team determine the ASHRAE
37 90.1-2004 standard to be not practicable for a major facility project, then it must be
38 determined by the State Building Commission if the standard is not practicable for that
39 major facility project. If the State Building Commission determines the standard is not
40 practicable for that major facility project, the State Building Commission shall
41 determine which standard is practicable for the design and construction for that major
42 facility project. If the ASHRAE 90.1-2004 standard is not followed for that project, the
43 public agency shall report this information and the reasons to the Department in its

1 report under G.S. 143-135.37, and the State Building Commission shall report this
2 information and the reasons to the Department."

3 **SECTION 1.2.** G.S. 115D-20 is amended by adding a new subdivision to
4 read:

5 "(14) To comply with the design and construction requirements for energy
6 and water efficient public buildings under Article 8C of Chapter 143 of
7 the General Statutes."

8 **SECTION 1.3.** The Department of Administration shall monitor the
9 development of construction or other energy efficiency standards to determine whether
10 there is a standard that the Department and the energy efficient buildings advisory
11 committee, established under G.S. 143-135.38, as enacted in Section 1.1 of this act,
12 determine would better fulfill the intent of Article 8C of Chapter 143 of the General
13 Statutes, as enacted by Section 1.1 of this act, to achieve energy efficiency and
14 increased energy savings in major facility projects, as defined in G.S. 143-135.36, as
15 enacted in Section 1.1 of this act, in buildings of the State, The University of North
16 Carolina, and the North Carolina Community College System than the ASHRAE
17 90.1-2004 standard defined in G.S. 143-135.36, as enacted in Section 1.1 of this act,
18 and, if so, whether Article 8C of Chapter 143 of the General Statutes, as enacted in
19 Section 1.1 of this act, should be amended to provide for the use of this standard rather
20 than the ASHRAE 90.1-2004 standard under that Article. Specifically, the Department
21 of Administration shall monitor the development of improved energy efficiency
22 standards developed by the American Society of Heating, Refrigerating and
23 Air-Conditioning Engineers, the ASHRAE standards, and monitor whether the State
24 Building Code Council adopts improved ASHRAE standards or any other energy
25 efficiency standards for inclusion in the State Building Code under Article 9 of Chapter
26 143 of the General Statutes that result in greater energy efficiency and increased energy
27 savings in major facility projects in State, University System, and community college
28 buildings. No later than January 1, 2009, and again January 1, 2010, the Department of
29 Administration shall report to the Chairs of the General Government Appropriations
30 Subcommittees of both the Senate and the House of Representatives, the Environmental
31 Review Commission, and the Joint Legislative Commission on Governmental
32 Operations on the results of its monitoring under this section, including any
33 recommendations for administrative or legislative proposals.

34 **SECTION 1.4.(a)** The Department of Administration shall conduct a
35 performance review of the energy and water efficient buildings program established
36 under Article 8C of Chapter 143 of the General Statutes, as enacted by Section 1.1 of
37 this act. The performance review shall include at least all of the following:

- 38 (1) Identification of the costs of implementing energy and water efficient
39 building standards in the design and construction of major facility
40 projects subject to that Article.
- 41 (2) Identification of operating savings attributable to the implementation
42 of energy and water efficient building standards, including, but not
43 limited to, savings in energy, water, utility, and maintenance costs.

- (3) Identification of any impacts on employee productivity from using energy and water efficient building standards.
- (4) Evaluation of the effectiveness of the energy and water efficient building standards established under this Article.
- (5) Any recommendations for any changes in those standards that may be supported by the Department's findings.

SECTION 1.4.(b) No later than December 1, 2010, the Department of Administration shall make a preliminary report of its findings under its performance review under subsection (a) of this section and its recommendations and, on or before December 1, 2011, a final report to the Chairs of the General Government Appropriations Subcommittees of both the Senate and the House of Representatives, the Environmental Review Commission, and the Joint Legislative Commission on Governmental Operations.

SECTION 1.5. Article 6 of Chapter 146 of the General Statutes is amended by adding a new section to read:

"§ 146-23.2. Purchase of buildings constructed or renovated to a certain energy and water efficiency standard.

(a) A State agency shall not acquire by purchase any building unless the building was designed and constructed to at least the same standard for energy and water efficiency that the design and construction of a comparable building was required to meet under applicable State law or local ordinance at the time the building under consideration for purchase was constructed.

(b) A State agency shall not acquire by purchase any building that had a major renovation unless the renovation was performed to at least the same standard for energy and water efficiency that the design and construction of a major renovation of a comparable building was required to meet under applicable State law or local ordinance at the time the building under consideration for purchase was renovated.

(c) This section does not apply to the purchase of a building having historic, architectural, or cultural significance under G.S. 143-23.1. This section does not apply to buildings that are acquired by devise or bequest."

PART II. RETROFIT EXISTING STATE AND UNIVERSITY BUILDINGS WITH ENERGY CONSERVATION MEASURES THAT HAVE A HIGH RETURN IN ENERGY SAVINGS AND THAT REQUIRE NO SIGNIFICANT EXPENDITURE OF FUNDS AND APPROPRIATE FUNDS TO A RESERVE FOR THE COSTS OF THESE RETROFITS.

SECTION 2.1.(a) The Department of Administration shall administer and oversee the implementation of a program whereby all of the following energy conservation measures, as defined in G.S. 143-64.17, shall be fully implemented no later than December 31, 2009, in each building owned by the State, The University of North Carolina, or the North Carolina Community College System:

- (1) Lighting Systems. – The installation of exit signs that employ light-emitting diode (LED) technology; the replacement of

incandescent light bulbs with compact fluorescent light bulbs; and where appropriate, as determined by the Department of Administration, the installation of occupancy sensors or optical sensors.

(2) Water Systems. – The installation of aerators in sink faucets that reduce the flow of water to a rate of no more than five-tenths gallons per minute (.5 g.p.m.); the installation of shower heads that reduce the flow of water to a rate of no more than one and five-tenths gallons per minute (1.5 g.p.m.); where appropriate, as determined by the Department of Administration, the resetting of hot water heaters to a water temperature of 120 degrees; the training of staff to monitor the use of irrigation systems and to base the use of the system on the moisture content of the soil, and either the elimination of potable water for irrigation or the reduction of water consumption in the building by twenty percent (20%) based on water consumption for the 2002-2003 fiscal year.

(3) Heating, Ventilation, and Air-conditioning (HVAC) Systems. – For HVAC equipment that is subject to replacement, the review of the specifications for the replacement HVAC equipment to ensure that it is not oversized; and, for building automation systems that are programmable, the training to ensure that these systems are properly programmed.

(4) Minor Equipment. – For minor motorized equipment that is subject to replacement, the replacement of minor equipment with equipment that has premium efficiency motors. For purposes of this subdivision, 'premium efficiency motor' means a motor that meets or exceeds a set of minimum full-load efficiency standards developed by the National Electrical Manufacturers Association (NEMA), the NEMA standards.

(5) For retrofit of existing buildings that require no significant expenditure of funds: Disconnect lamps in drink vending machines. Use power save feature on computers, monitors, copiers, fax machines and other office equipment. Purchase only Energy Star office equipment and appliances.

SECTION 2.1.(b) Consistent with G.S. 150B-2(8a)h., the Department of Administration shall develop or revise its architectural and engineering standards to provide assistance in determining which energy conservation measures are best suited to the unique characteristics of each building and in determining the specifications for the energy conservation measures under this section. The development or revision of the architectural and engineering standards shall be completed by February 1, 2008.

SECTION 2.1.(c) Prior to implementing this section and no later than February 1, 2008, the Department of Administration shall report to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission on its plan to implement this section.

1 **SECTION 2.1.(d)** In order to protect the integrity of historic buildings, this
2 section does not apply to the extent it would require the implementation of measures to
3 conserve energy, water, or other utility use that conflict with respect to any property
4 eligible for, nominated to, or entered on the National Register of Historic Places,
5 pursuant to the National Historic Preservation Act of 1966, P.L. 89-665; any historic
6 building located within an historic district as provided in Chapter 160A or 153A of the
7 General Statutes; any historic building listed, owned, or under the jurisdiction of an
8 historic properties commission as provided in Chapter 160A or 153A; or any historic
9 property owned by the State or assisted by the State.

10 **SECTION 2.2.(a)** There is appropriated from the General Fund to the Office
11 of State Budget and Management the sum of three million dollars (\$3,000,000) for the
12 2007-2008 fiscal year to be placed in a reserve. No later than February 1, 2008, the
13 Office of State Budget and Management shall develop a plan to allocate funds from this
14 reserve to the State agencies and the Board of Governors of The University of North
15 Carolina for the costs of implementing the energy conservation measures as directed
16 under this part. Subject to subsection (b) of this section, the Office of State Budget and
17 Management shall make allocations from this reserve to the State agencies and the
18 Board of Governors of The University of North Carolina in conformance with its
19 allocation plan under this subsection.

20 **SECTION 2.2.(b)** No State agency or constituent institution of The
21 University of North Carolina shall receive any funds under subsection (a) of this
22 section unless it has submitted its most recent plan for its management of energy, water,
23 and other utility use that is due under G.S. 143-64.12, as amended by Section 3.1 of this
24 act.

25
26 **PART III. REQUIRE THE DEPARTMENT OF ADMINISTRATION TO**
27 **CONDUCT ENERGY AUDITS EVERY FIVE YEARS FOR EACH STATE AND**
28 **UNIVERSITY BUILDING; REQUIRE ANNUAL UPDATES OF STATE AND**
29 **UNIVERSITY PLANS TO MANAGE ENERGY, WATER, AND OTHER**
30 **UTILITY USE; AND APPROPRIATE FUNDS TO ESTABLISH AN**
31 **ADDITIONAL FCAP TEAM AND TO CREATE A RESERVE FOR**
32 **COMMISSIONING EXISTING STATE AND UNIVERSITY BUILDINGS TO**
33 **REDUCE ENERGY CONSUMPTION.**

34
35 **SECTION 3.1.(a)** G.S. 143-64.12 reads as rewritten:
36 "**§ 143-64.12. Authority and duties of State ~~agencies~~ the Department; State**
37 **agencies and State institutions of higher learning.**

38 (a) The Department of Administration through the State Energy Office shall
39 develop a comprehensive program to manage energy, water, and other utility use for
40 State agencies and institutions of higher learning and shall update this program
41 annually. Each State agency and State institution of higher learning shall develop and
42 implement a management plan that is consistent with the State's comprehensive
43 program under this subsection to manage energy, water, and other utility use. The
44 energy consumption per gross square foot for all State buildings in total shall be reduced

1 by twenty percent (20%) by 2010 and thirty percent (30%) by 2015 compared to the
2 2003 baseline. Each State agency and State institution of higher learning shall update its
3 management plan annually and include strategies for supporting this reduction. Each
4 community college shall submit to the State Energy Office an annual written report of
5 utility consumption and costs.

6 ~~(a1) The General Assembly authorizes and directs that State agencies and State~~
7 ~~institutions of higher learning shall carry out the construction and renovation of State~~
8 ~~facilities, under their jurisdiction facilities in such a manner as to further the policy~~
9 ~~declared herein, ensuring set forth under this section and to ensure the use of life-cycle~~
10 ~~cost analyses and practices to conserve energy, water, and other utilities.~~

11 (b) The Department of Administration shall develop and implement policies,
12 procedures, and standards to ensure that State purchasing practices improve efficiency
13 regarding energy, water, and other utility use and take the cost of the product over the
14 economic life of the product into consideration. The Department of Administration shall
15 adopt and implement Building Energy Design Guidelines. These guidelines shall
16 include energy-use goals and standards, economic assumptions for life-cycle cost
17 analysis, and other criteria on building systems and technologies. The Department of
18 Administration shall modify the design criteria for construction and renovation of
19 facilities of State buildings and State institutions of higher learning buildings to require
20 that a life-cycle cost analysis be conducted pursuant to G.S. 143-64.15.

21 (b1) The Department of Administration, as part of the Facilities Condition and
22 Assessment Program, shall identify and recommend energy conservation maintenance
23 and operating procedures that are designed to reduce energy consumption within the
24 facility of a State agency or State institution of higher learning and that require no
25 significant expenditure of funds. ~~State departments, institutions, or agencies~~ Every State
26 agency or State institution of higher learning shall implement these recommendations.
27 Where energy management equipment is proposed for State facilities, any facility of a
28 State agency or State institution of higher learning, the maximum interchangeability and
29 compatibility of equipment components shall be required. As part of the Facilities
30 Condition and Assessment Program under this section, the Department of
31 Administration shall develop an energy audit and a procedure for conducting energy
32 audits. Every five years the Department shall conduct an energy audit for each State
33 agency or State institution of higher learning.

34 ~~The Department of Administration shall develop a comprehensive program to~~
35 ~~manage energy, water, and other utility use for State government. Each State agency~~
36 ~~shall develop and implement a management plan that is consistent with the State's~~
37 ~~comprehensive program to manage energy, water, and other utility use.~~

38 (c) through (g) Repealed by Session Laws 1993, c. 334, s. 4.

39 (h) When conducting an energy audit under this section, the Department of
40 Administration shall identify and recommend any facility of a State agency or State
41 institution of higher learning as suitable for building commissioning to reduce energy
42 consumption within the facility or as suitable for installing an energy savings measure
43 pursuant to a guaranteed energy savings contract under Part 2 of this Article.

(i) Consistent with G.S. 150B-2(8a)h., the Department of Administration may adopt architectural and engineering standards to implement this section.

SECTION 3.1.(b) G.S. 143-64.10 reads as rewritten:

"§ 143-64.10. Findings; policy.

(a) The General Assembly finds all of the following:

- (1) That the State shall take a leadership role in aggressively undertaking the conservation of energy, water, and other utilities in North Carolina.
- (2) That State facilities and facilities of the State institutions of higher learning have a significant impact on the State's consumption of energy, water, and other utilities.
- (3) That practices to conserve energy, water, and other utilities that are adopted for the design, construction, operation, maintenance, and renovation of these facilities and for the purchase, operation, and maintenance of equipment for these facilities will have a beneficial effect on the State's overall supply of energy, water, and other utilities.
- (4) That the cost of the energy, water, and other utilities consumed by these facilities and the equipment for these facilities over the life of the facilities shall be considered, in addition to the initial cost.
- (5) That the cost of energy, water, and other utilities is significant and facility designs shall take into consideration the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of the facility, of the energy, water, and other utilities consumed, and of operation and maintenance of the facility as it affects the consumption of energy, water, or other utilities.
- (6) That State government shall undertake a program to reduce the use of energy, water, and other utilities in ~~State-State~~ and State institution of higher learning facilities and equipment in those facilities in order to provide its citizens with an example of energy-use, water-use, and utility-use efficiency.

(b) It is the policy of the State of North Carolina to ensure that practices to conserve energy, water, and other utilities are employed in the design, construction, operation, maintenance, and renovation of ~~State-State~~ and State institution of higher learning facilities and in the purchase, operation, and maintenance of equipment for ~~State-these~~ facilities."

SECTION 3.1.(c) G.S. 143-64.11 is amended by adding a new subdivision to read:

"(10) 'State institution of higher learning' means any constituent institution of The University of North Carolina."

SECTION 3.2. The Department of Administration shall establish and train an additional team to examine existing facilities of State agencies and State institutions of higher learning to identify and recommend energy conservation maintenance and operating procedures designed to reduce energy consumption and to conduct energy audits and identify a facility as suitable for building commissioning or for installing an

energy savings measure under the Facilities Condition Assessment Program (FCAP) under G.S. 143-64.12, as amended by Section 3.1 of this act.

SECTION 3.3. There is appropriated from the General Fund to the Department of Administration the sum of two hundred sixty-five thousand seven hundred eighty-seven dollars (\$265,787) for the 2007-2008 fiscal year to establish and support three Building System Engineer II positions to comprise the additional team the Department of Administration is directed to establish under Section 3.2 of this act and the sum of two hundred fifty-two thousand two hundred eighty-seven dollars (\$252,287) for the 2008-2009 fiscal year to continue and support these three positions.

SECTION 3.4.(a) There is appropriated from the General Fund to the Office of State Budget and Management the sum of five million dollars (\$5,000,000) for the 2007-2008 fiscal year to be placed in a reserve. No later than February 1, 2008, the Office of State Budget and Management shall develop a plan to allocate funds from this reserve to State agencies and the Board of Governors of The University of North Carolina for the costs of commissioning existing buildings that are identified as suitable for building commissioning to reduce energy consumption under G.S. 143-64.12, as amended by Section 3.1 of this act. Subject to subsection (b) of this act, the Office of State Budget and Management shall make allocations from this reserve to State agencies and the Board of Governors of The University of North Carolina in conformance with its allocation plan under this subsection.

SECTION 3.4.(b) No State agency or institution of The University of North Carolina shall receive any funds under subsection (a) of this section unless it has submitted its most recent plan for its management of energy, water, and other utility use that is due under G.S. 143-64.12, as amended by Section 3.1 of this act.

PART IV. REQUIRE LIFE-CYCLE COST ANALYSES TO BE COMMENCED AND CERTIFIED AT THE SCHEMATIC DESIGN PHASE OF CONSTRUCTION OR RENOVATION PROJECTS AND TO BE UPDATED, AMENDED, AND RECERTIFIED AS NEEDED AT LATER PHASES OF CONSTRUCTION; AND APPROPRIATE FUNDS TO ESTABLISH A POSITION IN THE DEPARTMENT OF ADMINISTRATION DEDICATED TO CONDUCTING LIFE-CYCLE COST ANALYSES.

SECTION 4.1. G.S. 143-64.15(a) reads as rewritten:

"(a) A life-cycle cost analysis shall be commenced at the schematic design phase of the construction or renovation project, shall be updated or amended as needed at the design development phase, and shall be updated or amended again as needed at the construction document phase. A life-cycle cost analysis shall include, but not be limited to, all of the following elements:

- (1) The coordination, orientation, and positioning of the facility on its physical ~~site~~site.
- (2) The amount and type of fenestration and the potential for daylighting employed in the ~~facility~~facility.

- (3) Thermal characteristics of materials and the amount of insulation incorporated into the facility ~~design; design.~~
- (4) The variable occupancy and operating conditions of the facility, including illumination ~~levels; and levels.~~
- (5) Architectural features that affect the consumption of energy, water, and other utilities."

SECTION 4.2. G.S. 143-64.15A reads as rewritten:

"§ 143-64.15A. Certification of life-cycle cost analysis.

~~All State agencies under the jurisdiction of the Department of Administration. Each State agency and each State institution of higher learning performing a life-cycle cost analysis for the purpose of constructing or renovating any State facility or facility of a State institution of higher learning shall, prior to selecting a design option or advertising for bids for construction, submit the life-cycle cost analysis to the Department for certification.~~ certification at the schematic design phase and again when it is updated or amended as needed in accordance with G.S. 143-64.15. The Department shall review the material submitted by the State agency, agency or State institution of higher learning, reserve the right to require agencies—an agency or institution to complete additional analysis to comply with certification, perform any additional analysis, as necessary, to comply with G.S. 143-341(11), and require that all construction or renovation conducted by the State agency or State institution of higher learning comply with the certification issued by the Department."

SECTION 4.3. There is appropriated from the General Fund to the Department of Administration the sum of one hundred thousand dollars (\$100,000) for the 2007-2008 fiscal year to establish and support a Building System Engineer III position, which position shall be dedicated to conducting life-cycle cost analyses under Part 1 of Article 3B of Chapter 143 of the General Statutes, as amended by Part III and Part IV of this act and the sum of ninety-five thousand fifty dollars (\$95,050) for the 2008-2009 fiscal year to continue and support this position.

PART V. EFFECTIVE DATES.

SECTION 5. Sections 2.2, 3.3, 3.4, and 4.3 of this act become effective July 1, 2007. The remaining sections of this act become effective December 1, 2007. Sections 1.1 and 1.2 apply to contracts for the design of major facility projects, as defined in G.S. 143-135.36 as enacted in Section 1.1 of this act, that are entered into on or after December 1, 2007. Section 4.1 applies to life-cycle cost analyses commenced, and to contracts entered into for life-cycle cost analyses, on or after December 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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1

HOUSE BILL 773*

Short Title: Protect Military Personnel/Life Insurance.-AB (Public)

Sponsors: Representatives Martin, Glazier, Dickson, Lucas (Primary Sponsors); Alexander, Brisson, Church, England, Faison, Farmer-Butterfield, Folwell, Grady, Gulley, J. Harrell, Harrison, Holliman, McGee, Pierce, Ross, Tarleton, Underhill, and Wainwright.

Referred to: Homeland Security, Military and Veterans Affairs, if favorable, Judiciary I.

March 15, 2007

A BILL TO BE ENTITLED
AN ACT TO PROTECT MEMBERS OF THE UNITED STATES ARMED FORCES
FROM DISHONEST AND PREDATORY LIFE INSURANCE AND ANNUITY
SALES PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 6. Dishonest and Predatory Sales to Military Personnel.

"§ 58-58-320. Purpose.

(a) The purpose of this Part is to set forth standards to protect service members of the Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part.

"§ 58-58-325. Scope.

This Part applies to the solicitation or sale of any life or annuity product by an insurer or insurance producer to a member of the Armed Forces, wherever located.

"§ 58-58-330. Exemptions.

This Part does not apply to solicitations or sales involving:

(1) Credit insurance.

(2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer.

(3) An application to the existing insurer that issued the existing policy or contract when (i) a contractual change or a conversion privilege is being exercised, (ii) the existing policy or contract is being replaced by

the same insurer pursuant to a program filed with and approved by the Commissioner, or (iii) a term conversion privilege is exercised among corporate affiliates.

(4) Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.

(5) Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).

b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer.

c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

f. Prearranged funeral contracts.

"§ 58-58-335. Definitions.

As used in this Part:

(1) "Armed Forces" means all components of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard and their reserve components.

(2) "Department of Defense personnel" means any service member and all civilian employees, including nonappropriated fund employees and special government employees, of the United States Department of Defense, or its successor agency.

(3) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).

(4) "Life insurance" means insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income; and unless otherwise specifically excluded, includes annuities.

(5) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(6) "Service member" means any active duty commissioned officer, any active duty warrant officer, or any enlisted member of the Armed Forces.

(7) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding annuities, by rider, by endorsement, or other mechanism that accumulates premium or deposits at interest, or by other means. "Side fund" does not include accumulated or cash value or secondary guarantees provided by a universal life policy nor does it include cash values provided by a whole life policy that are subject to the standard nonforfeiture law for life insurance.

(8) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair.

The following acts or practices are declared to be false, misleading, deceptive, or unfair:

- (1) Possessing, completing, submitting, or processing or assisting in the submission or processing of, any form or device used by the Armed Forces to direct a service member's pay to a third party, including using or assisting in using a service member's "MyPay" account or other similar Internet medium, for the purpose of establishing a direct deposit for the purchase of life insurance.
- (2) Establishing any account or fictitious account in the name of an applicant or insured service member at a depository institution for the purpose of receiving funds for the payment of premium or receiving any funds directly or indirectly through the use of Treasury Form 1199A, "Direct Deposit Sign-Up Form", or its equivalent.
- (3) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation.
- (4) Offering or giving anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.
- (5) Participating in or assisting in any Armed Forces sponsored education or orientation program.
- (6) Offering or giving anything of value, directly or indirectly, greater than five dollars (\$5.00) in any 12-month period, or in an amount specified by Department of Defense regulations, to any service member who has direct command authority over or direct responsibility for service members with a pay grade of E-1 through E-4.
- (7) Offering or giving anything with a value greater than five dollars (\$5.00) to a service member for the service member's attendance at any event involving the solicitation or sale of life insurance.

- (8) Soliciting the purchase of any life insurance product on a military installation randomly or selectively from household to household without prior specific appointment or invitation.
- (9) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
- (10) Making appointments with, or soliciting service members during, their duty hours.
- (11) Making appointments with or soliciting service members on a military installation in barracks, day rooms, unit areas, or transient personnel housing.
- (12) Making any representation, or using any device, that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, recommended by the United States government, the Armed Forces, or any state or federal agency, or any government entity.
- (13) Using any title, descriptive name, or identifier, other than titles that identify the insurance producer as a producer or agent for the insurer. Examples include, "Battalion Insurance Counselor", "Unit Insurance Advisor", "Servicemen's Group Life Insurance Conversion Consultant", or "Veteran's Benefits Counselor".
- (14) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party eleemosynary or charitable organization that promotes the welfare of, or assists members of, the Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that the organization is affiliated, connected, or associated with, or endorsed, sponsored, sanctioned, or recommended by the United States Government or the Armed Forces.
- (15) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.
- (16) Excluding annuities, representing that the life insurance product costs "nothing" or is "free", or otherwise misrepresenting the mortality costs for the product.
- (17) Making any representation regarding the availability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance that is false, misleading, or deceptive.
- (18) Making any representation about conversion requirements, including the costs of coverage, or exclusions or limitations to coverage, of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to private insurers that is false, misleading, or deceptive.

- 1 (19) Deploying, using, or contracting for any lead generating materials that
2 do not clearly and conspicuously disclose that the recipient will be
3 contacted by an insurance producer for the purpose of soliciting the
4 purchase of life insurance. For the purposes of this subdivision,
5 "clearly and conspicuously" requires a type size of at least 16 points.
6 (20) Failing to disclose that a solicitation for the sale of life insurance will
7 be made when establishing a specific appointment for a meeting with a
8 prospective purchaser.
9 (21) Excluding annuities, failing to disclose in a clear and conspicuous
10 manner the fact that the product being sold is life insurance, the
11 amount of coverage, and the cost of the coverage.
12 (22) Failing to make, at the time of sale or offer, the written disclosures
13 required by the "Military Personnel Financial Services Protection Act",
14 P.L. 109-290.
15 (23) Failing to provide the applicant at the time a policy is applied for (i) a
16 copy of the application, (ii) a written disclosure that clearly and
17 concisely sets out the coverage provided and the cost of the coverage,
18 and (iii) an explanation of any free-look period with instructions on
19 how to cancel.
20 (24) Excluding annuities, recommending the purchase of any life insurance
21 product that includes a side fund to service members in pay grades E-1
22 through E-4, unless the insurer has reasonable grounds for believing
23 that the life insurance, standing alone, is suitable. Sale of a life
24 insurance product that includes a side fund to a service member in pay
25 grades E-1 through E-4 or their equivalents, who is currently enrolled
26 in Servicemembers' Group Life Insurance, is presumed unsuitable.
27 (25) Excluding annuities, offering for sale or selling any life insurance
28 contract that includes a side fund unless interest credited accrues from
29 the date of deposit to the date of withdrawal and permits withdrawals
30 without limit or penalty.
31 (26) Excluding annuities, offering for sale or selling any life insurance
32 contract that includes a side fund, unless the applicant has been
33 provided with a schedule of effective rates of return based upon cash
34 flows of the combined product. For this disclosure, the effective rate of
35 return will consider all premiums or cash contributions made by the
36 policyholder and all cash accumulations or cash surrender values
37 available to the policyholder in addition to life insurance coverage.
38 (27) Excluding annuities, offering for sale or selling any life insurance
39 contract that includes a side fund that by default diverts or transfers
40 accumulated funds to pay, reduce, or offset any premiums due, unless
41 the applicant, in writing, affirmatively chooses that option.
42 (28) Excluding annuities, offering for sale or selling any life insurance
43 contract that, after considering all policy benefits, including

1 endowment, return of premium, or persistency, does not comply with
2 the standard nonforfeiture law for life insurance.

3 (29) Offering for sale or selling any life insurance product that excludes
4 coverage if the insured's death is related to war, declared or
5 undeclared, or any act related to military service except for accidental
6 death coverage, which may be excluded.

7 (30) Suggesting, recommending, or encouraging a service member to
8 cancel or terminate the service member's Servicemembers' Group Life
9 Insurance policy or issuing a life insurance policy that replaces an
10 existing Servicemembers' Group Life Insurance policy.

11 (31) Accepting an application for life insurance or issuing a policy of life
12 insurance on the life of an enlisted member of the United States Army
13 with the pay grade of E-1, E-2, or E-3 without first obtaining for the
14 Company's files a completed copy of DA Form 2056, "Commercial
15 Insurance Solicitation Record", or its equivalent, which confirms that
16 the applicant has received counseling as required by Army Regulation
17 210-7 or its equivalent.

18 **"§ 58-58-345. Overcoming the presumption of unsuitability.**

19 (a) The presumption of unsuitability regarding the sale of life insurance contracts
20 that include a side fund to service members in pay grades E-1 through E-4 may be
21 overcome if, after the completion of a needs assessment, the insurer demonstrates that
22 the applicant's Servicemembers' Group Life Insurance death benefit, together with any
23 other military survivors benefits, savings, and investments, survivors income, and other
24 life insurance, are insufficient to meet the applicant's insurable needs for life insurance.

25 (b) As used in this section, "insurable needs" are the risks associated with
26 premature death, taking into consideration the financial obligations and immediate and
27 future cash needs of the applicant's estate or survivors, or both.

28 (c) Other military survivor's benefits provided by the federal government that
29 must be included in a service member's needs assessment include the Death Gratuity,
30 Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational
31 Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits,
32 Survivor's Housing Benefits and Allowances, and Federal Income Tax Forgiveness.

33 **"§ 58-58-350. Procedures and sanctions.**

34 (a) The provisions of G.S. 58-63-20, 58-63-25, 58-63-32, 58-63-35, 58-63-50,
35 and 58-63-60 apply to this Part and are incorporated into this Part by reference.

36 (b) A violation of this Part is a ground for license suspension, probation,
37 revocation, nonrenewal, or denial under G.S. 58-33-46 and subjects the violator to
38 G.S. 58-2-70."

39 **SECTION 2.** This act becomes effective October 1, 2007, and applies to acts
40 or offenses committed on or after that date.



HOUSE BILL 773: Protect Military Personnel/Life Insurance.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 13, 2007
Introduced by:	Reps. Martin, Glazier, Dickson, Lucas	Summary by:	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: *House Bill 773 adds a new Part 6 to Article 58, Insurance, to protect members of the Armed Forces from dishonest and predatory sale and solicitation of life insurance and annuity products. The bill applies to the sale and solicitation of life insurance and annuity products by insurers to active duty members of the Armed Forces and prohibits false, misleading, deceptive or unfair acts as listed in the new Part.*

[As introduced, this bill was identical to S886, as introduced by Sen. Rand, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

BILL ANALYSIS: House Bill 773 adds a new Part 6 to Article 58, Insurance, to protect members of the Armed Forces from dishonest and predatory sale and solicitation of life insurance and annuity products. The bill applies to the sale and solicitation of life insurance and annuity products by insurers to active duty members of the Armed Forces and prohibits false, misleading, deceptive or unfair acts as listed in the new Part.

The new **G.S. 58-58-340 in Part 6** lists the acts or practices to be declared false, misleading, deceptive, or unfair and includes the following:

- Possessing, completing, submitting, or processing or assisting in the submission or processing of any form or device to direct a member's pay to a third party.
- Establishing and account or fictitious account in the name of an applicant to receive funds for the payment of premiums.
- Using Department of Defense (DoD) personnel as a representative in official business capacity with or without compensation.
- Offering or giving anything of value to DoD personnel to procure their assistance in the solicitation or sale of life insurance to another service member.
- Participating in or assisting in an Armed Forces sponsored education or orientation program.
- Offering or giving anything with a greater value than \$5.00 (1) to a service member for the member's attendance at an event involving the solicitation or sale of life insurance or (2) in a 12 month period to service members with direct command authority over service members with a pay grade of E-1 through 3-4.
- Soliciting the purchase life insurance on a military installation from household to household without prior specific appointment.
- Soliciting service members in a group or captive audience where attendance is not voluntary.
- Making appointments or soliciting during a service members duty hours or on a military installation in barracks, dayrooms, unit areas or transient housing.

House Bill 773

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- Making any representation or using a device to confuse a service member into believing that the insurer is affiliated with the State or federal government, Armed Forces, or other government entity.
- Using deceptive titles or names.
- Using the credited insurance rate on a policy in a manner that implies a net return on premiums paid.
- Representing that the life insurance costs or is free.
- Making misrepresentations about Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.
- Regulating the sale of products using of side funds (a fund or reserve that is attached to a life insurance policy, excluding annuities, by rider or endorsement that accumulates premium or deposits at interest). The new **G.S. 58-58-345** provides that a presumption of unsuitability regarding the sale life insurance with side funds by be overcome if a needs assessment demonstrates that the applicant's Servicemembers' Group Life Insurance benefit together with other benefits, savings, investments, income and life insurance meets the applicant's life insurance needs.
- Offering products that exclude coverage for death related to war or service except for accidental death coverage.

The new G.S. 58-58-30 bill exempts solicitation or sales involving various products including (1) credit insurance; (2) group life or annuities; (3) applications to the existing insurer for certain changes to existing policies; (4) contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance and (5) ERISA plans, tax exempt plans, other deferred compensation plans.

EFFECTIVE DATE: House Bill 773 becomes effective October 1, 2007.

H0773e1-SMRG-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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1

SENATE BILL 215

Short Title: Litter Reduction Act of 2007.

(Public)

Sponsors: Senators Berger of Franklin; Cowell, Goss, Graham, and Kinnaird.

Referred to: Commerce, Small Business and Entrepreneurship.

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO REDUCE ROADSIDE AND OTHER LITTERING AND TO
ENCOURAGE RECYCLING BY REQUIRING A DEPOSIT ON BEVERAGE
CONTAINERS AND REQUIRING REDEMPTION CENTERS TO ACCEPT
RETURNED BEVERAGE CONTAINERS AND REFUND THE DEPOSITS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended
by adding a new Part to read:

"Part 2E. Beverage Container Deposits and Refunds.

"§ 130A-309.90. Findings; intent.

(a) The General Assembly finds that:

- (1) Beverage containers constitute a major source of nondegradable litter and solid waste in this State.
- (2) Litter remains a large problem in North Carolina despite other efforts to discourage littering and to establish criminal penalties under G.S. 14-399 for first-time and subsequent offenses of littering.
- (3) The collection and disposal of litter imposes a great financial burden on the citizens of North Carolina.
- (4) A more concerted effort to reduce litter is needed in North Carolina.
- (5) Beverage containers should be reused or recycled.
- (6) Other states' experience shows that beverage container deposit legislation is successful in reducing litter and increasing recycling of discarded beverage containers.
- (7) Beverage container deposit legislation is consistent with the State's policy, set forth in G.S. 130A-309.04, to promote methods of solid waste management that are alternatives to disposal in landfills.
- (8) The program under this Part will contribute significantly to the reduction of the beverage container component of the litter in this State.

(b) It is the intent of the General Assembly to address the blight that litter imposes on the highways and lands of this State, while creating incentives for manufacturers, distributors, retailers, and consumers of beverages in beverage containers to recycle and reuse beverage containers.

"§ 130A-309.91. Definitions.

Unless a different meaning is required by the context, the following definitions apply throughout this Part:

- (1) 'Beverage' means any ready-to-drink liquid intended for human consumption. Beverage includes any malt beverage; spirituous liquor; fortified wine; unfortified wine; wine cooler; soda or noncarbonated water; and any nonalcoholic carbonated or noncarbonated drink in liquid form.
- (2) 'Beverage container' means the individual, separate bottle, can, jar, carton, or other receptacle that has been sealed by a manufacturer, contains a beverage, and is made of glass, metal, plastic, or other material, or any combination of these materials. Beverage container does not include cups or other similar open or loosely sealed receptacles.
- (3) 'Consumer' means an individual who purchases a beverage in a beverage container for his or her use or consumption. Consumer includes a lodging, eating, or drinking establishment.
- (4) 'Convenience zone' means a zone designated by the Department under G.S. 130A-309.95.
- (5) 'Curbside program' means a recycling program that meets all of the following criteria:
 - a. The program picks up recyclables from individual residences.
 - b. The program is operated by, or pursuant to a contract with, a city, county, or other public agency.
 - c. The program accepts empty beverage containers from consumers with the intent to recycle them.
- (6) 'Distributor' means a person who engages in the sale of beverages in beverage containers to a retailer in this State, including any person who imports beverages from outside the State for sale to retailers or consumers in this State.
- (7) 'Drop-off or collection program' means any person, association, nonprofit corporation, church, club, or other organization that meets the requirements of the Department for a drop-off or collection program and that accepts or collects empty beverage containers from consumers with the intent to recycle them, but is not certified by the Department as a redemption center and does not pay the refund value to consumers. Drop-off or collection program does not include a nonprofit drop-off program or a curbside program.
- (8) 'Empty beverage container' means a beverage container that meets all of the following requirements:

- 1 a. Has the seal or closure installed by the manufacturer broken or
2 removed.
- 3 b. Does not contain foreign materials other than the residue of the
4 beverage originally packaged in the beverage container by the
5 manufacturer.
- 6 c. Bears the message required under G.S. 130A-309.93 or is a
7 refillable beverage container.
- 8 d. Has a refund value established under G.S. 130A-309.93.
- 9 (9) 'Nonprofit drop-off program' means a recycling program that meets all
10 of the following criteria:
- 11 a. The program is organized under section 501(c) or section
12 501(d) of the Internal Revenue Code (26 U.S.C. § 501(c), §
13 501(d)), or operated by, or caused to be operated by, a city,
14 county, or other public agency.
- 15 b. The program is certified by the Department as a redemption
16 center under G.S. 130A-309.96.
- 17 c. The program accepts empty beverage containers from
18 consumers with the intent to recycle them.
- 19 (10) 'Operator of a vending machine' means its owner, the person who
20 refills it, or the owner or lessor of the property upon which it is
21 located.
- 22 (11) 'Redemption center' means an operation that is certified by the
23 Department and that accepts empty beverage containers from
24 consumers and pays, or provides the refund value, for empty beverage
25 containers.
- 26 (12) 'Redemption location' means a place, mobile unit, reverse vending
27 machine, or other device where a certified redemption center accepts
28 one or more types of empty beverage containers from consumers, and
29 pays, or provides the refund value, for one or more types of empty
30 beverage containers.
- 31 (13) 'Retailer' means a person who sells or offers for sale in this State to
32 consumers a beverage in a beverage container, including an operator of
33 a vending machine containing a beverage in a beverage container.
- 34 (14) 'Reverse vending machine' means a mechanical device that accepts one
35 or more types of empty beverage containers and issues a cash refund
36 or a redeemable credit slip with a value not less than the container's
37 refund value.
- 38 (15) 'Supermarket' means a full-line, self-service retail store with gross
39 annual sales of two million dollars (\$2,000,000) or more that sells a
40 line of dry goods, canned goods, or nonfood items and some perishable
41 items.
- 42 (16) 'Use or consumption' means the exercise of any right or power over a
43 beverage incident to the ownership thereof, other than the sale, storage,
44 or retention for the purposes of sale of a beverage.

1 **"§ 130A-309.92. Department to administer program; adoption of rules; scope of**
2 **Part.**

3 (a) The Department shall administer this Part.

4 (b) The Department and the Commission for Health Services may adopt any
5 rules necessary or useful to implement this Part, and the Department may adopt any
6 rules necessary or useful to carry out any of its duties imposed under this Part. The
7 Department shall determine, by rule, whether any refund value applies to, or shall be
8 paid for, a refillable beverage container under this Part. The Department may establish,
9 by rule, criteria prescribing an obligation for the pickup or transfer of empty, unbroken,
10 and reasonably clean beverage containers from redemption centers. The obligation may
11 be fulfilled through a contracted agent. Any rules adopted under this subsection shall
12 allocate the burdens associated with the handling, storage, and transportation of empty
13 containers to prevent unreasonable financial or other hardship. These rules may require
14 a redemption center to transport all returned containers to a material recovery facility or
15 a recycling firm for sale at market or scrap value.

16 **"§ 130A-309.93. Deposit and refund value; requirements concerning beverage**
17 **containers.**

18 (a) Every consumer who purchases a beverage in a beverage container shall pay
19 a deposit equal to the refund value under subsection (b) of this section.

20 (b) Subject to subsection (e) of this section, every beverage container sold or
21 offered for sale to a consumer in this State that contains no more than four liters and no
22 less than 50 milliliters of a beverage shall have a refund value of ten cents (10¢).

23 (c) Every beverage container that contains a beverage that is sold or offered for
24 sale in this State shall clearly indicate by embossing or imprinting on the normal
25 product label, or in the case of metal beverage containers, on the top of the container the
26 words 'North Carolina' or the initials 'N.C.' and the refund value of the container in not
27 less than one-quarter inch type size. This subsection does not apply to any permanently
28 labeled glass beverage container having a refund value of not less than ten cents (10¢)
29 prior to the effective date of this Part and having a brand name permanently marked
30 thereon, unless the glass beverage container contains spirituous liquors, fortified or
31 unfortified wines, or malt beverages.

32 (d) Every beverage container that contains a beverage that is sold or offered for
33 sale in this State shall be made of materials that are recyclable or made of recycled
34 materials.

35 (e) Every five years, the Department shall determine the percentages of each
36 category of beverage containers, based on the composition of the container: aluminum,
37 nonaluminum metal, glass, plastic, or other materials or combination of materials, that
38 are being returned. If the Department finds that the return rate for any category is less
39 than seventy-five percent (75%), the Department may increase the refund rate for that
40 category of beverage containers by five cents (5¢).

41 **"§ 130A-309.94. Duties of retailers.**

42 (a) Every retailer shall pay to the distributor deposits equal to the value of the
43 refunds under G.S. 130A-309.92 when the retailer purchases beverages from a
44 distributor and shall receive deposits from consumers at the time of sale.

(b) Every retailer shall identify, by a clear and conspicuous sign at the retailer's place of business, the address of at least the redemption center or redemption location nearest to the retailer that redeems all types of empty beverage containers at one location during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 A.M. to 5:00 P.M.

"§ 130A-309.95. Redemption centers duties; additional duties of Department.

(a) There shall be at least one certified redemption center or redemption location within every convenience zone. The redemption center and redemption location shall accept from any consumer and shall pay to the consumer the refund value in cash at one location for all types of empty beverage containers during at least 30 hours per week with a minimum of five hours of operation occurring during periods other than from Monday to Friday, from 9:00 A.M. to 5:00 P.M. The redemption center may pay the refund value based on the weight of the empty beverage containers.

(b) The redemption center and redemption location shall accept from any drop-off or collection program and shall pay to the drop-off or collection program the refund value for all types of empty beverage containers. The redemption center may pay the refund value based on the weight of the empty beverage containers. No drop-off or collection program shall pay any refund to the consumer.

(c) The Department shall, on a statewide basis, designate all convenience zones, including convenience zones in underserved areas, and shall prepare a map showing these convenience zones. The Department shall update convenience zone designations and maps as necessary. The Department shall develop and maintain a list of supermarkets and shall identify supermarket locations only for the purpose of providing a reference point in the establishment of convenience zones. The Department shall not designate more than one convenience zone per 10,000 residents in nonrural underserved areas or more than one convenience zone per 7,000 residents in rural underserved areas. The redemption location in underserved areas shall be located within one mile of a retailer. The Department shall not designate a convenience zone in an underserved area that would require establishing a redemption center or a redemption location in an area adjacent to, or conveniently accessible to, an established convenience zone.

(d) The Department shall attempt to enter into agreements with established recycling centers to provide redemption centers or redemption locations that satisfy the requirements under subsection (a) of this section in each convenience zone.

(e) If the Department determines that subsection (a) of this section cannot be fulfilled in a particular convenience zone due to factors beyond the control of the Department, the Department may establish by rule an alternative minimum convenience requirement for that convenience zone that shall not conflict with the purposes of this Part.

(f) The Secretary may grant an exemption to the requirements of subsection (a) of this section if all of the following conditions exist:

- (1) The Secretary may grant an exemption only for individual convenience zones. The Secretary shall not grant a blanket exemption to areas larger than a single convenience zone.

- (2) An exemption may be granted only to further the purposes of this Part.
- (3) An exemption may be granted only after the Department holds a public hearing.
- (4) An exemption may only be granted to prevent the creation of excessive redemption locations resulting in severe adverse local market conditions for recycled materials or if, after a public hearing, a city, county, or city and county request an exemption for an existing nonprofit recycling center for its location.
- (5) The total number of exemptions shall not be more than ten percent (10%) of all redemption locations that would otherwise be created under this Part, as calculated by the Department.
- (6) The Secretary shall not grant an exemption that would significantly decrease the ability of consumers to conveniently return empty beverage containers and receive payments for the refund value.
- (7) In areas where curbside programs collect and recycle beverage containers, the Secretary shall not grant an exemption for the benefit of the curbside program unless the local agency administering the program requests the Department to grant an exemption and the program collects and recycles all types of beverage containers from households at least weekly.

"§ 130A-309.96. Redemption centers; certification process.

(a) The Department shall certify redemption centers pursuant to this section. The Department shall certify any nonprofit drop-off program that meets the requirements established by the Department and the purposes of this Part. The Department shall not certify any drop-off or collection program as a redemption program. The Secretary shall adopt by rule a procedure for the self-certification of redemption centers, including standards for certification. These rules shall require that all information be submitted to the Department under penalty of perjury. These rules shall require that at least all of the following conditions be satisfied for certification:

- (1) The operator of the redemption center demonstrates to the satisfaction of the Department that the operator will operate in accordance with this Part and any rules adopted under this Part.
- (2) The operator of the redemption center shall not knowingly pay a refund for any food or packaging material or any beverage container or other product that does not have a refund value under G.S. 130A-309.93.
- (3) The operator of the redemption center shall take those actions that satisfy the Department to prevent the payment of a refund for any food or packaging material or any beverage container or other product that does not have a refund value under G.S. 130A-309.93.
- (4) The operator of the redemption center shall accept all empty beverage containers, regardless of type, from consumers and from drop-off or collection programs and shall pay the refund value for all empty beverage containers, regardless of type.

(5) The operator of the redemption center shall notify the Department promptly of any change in the nature of its operations that conflicts with information submitted in the operator's application for certification.

(6) The operator of the redemption center shall be subject to an audit of empty beverage container redemptions by the Department, in a manner determined by the Department, to ensure that the operator is complying with this Part and any rules adopted under this Part.

(b) The Department may review and verify all applications for certification of redemption centers and may conduct an investigation of any applicant in any manner that the Department deems necessary to promote the purposes of this Part.

(c) After notice and hearing, the Department may revoke, suspend, or refuse to renew a certificate granted under this section or may impose a civil penalty on the operator holding the certificate for any one or more of the following reasons:

(1) The operator is convicted of any crime substantially related to the qualifications, functions, and duties of an operator of a redemption center.

(2) The operator engaged in fraud or deceit to obtain a certificate for a redemption center.

(3) The operator engaged in dishonesty and substantial incompetence or fraud performing the functions and duties of an operator of a redemption center.

(4) The operator willfully violated G.S. 130A-309.95(a), 130A-309.95(b), or 130A-309.103(c).

(d) In making a determination under subsection (c) of this section, the Department may do any of the following:

(1) Immediately revoke the certificate.

(2) Immediately suspend the certificate for a specified period of time.

(3) Permit the operator to continue operation as a certified redemption center until a specified date, at which time the revocation or suspension shall become effective.

(4) Permit the operator to continue operation as a certified redemption center on condition of complying with any conditions that the Department determines would further the purposes of this Part.

(5) Impose a civil penalty of not more than one hundred dollars (\$100.00) per violation. Each day that a violation occurs shall be considered a separate violation.

"§ 130A-309.97. Reimbursement to redemption centers and other programs.

(a) The Department shall reimburse the redemption center the refund value for every empty beverage container received by the redemption center from consumers and from drop-off or collection programs, plus two percent (2%) of the refund value for administrative costs.

(b) The Department shall reimburse the nonprofit drop-off program the refund value for every empty beverage container received by the drop-off program from

consumers. A nonprofit drop-off program may pay refunds to the consumers, and, if it does, the Department shall also pay to the nonprofit drop-off two percent (2%) of the refund value for administrative costs.

(c) The Department shall reimburse the curbside program the refund value for every empty beverage container received by the curbside program from consumers. No curbside program shall pay any refund to the consumer, and no curbside program is eligible to receive any sum for administrative costs.

"§ 130A-309.98. Duties of distributors.

Within 10 days of the end of each month and in a form and manner to be determined by the Department, a distributor shall pay to the Department the refund value of every beverage container sold or transferred to a retailer, less one percent (1%) for the distributor's administrative costs.

"§ 130A-309.99. Retailer acting as distributor.

Whenever any retailer or group of retailers receives a shipment or consignment of, or in any other manner acquires, beverage containers outside the State for sale to consumers in the State, such retailer shall comply with this Part as if the retailer were a distributor, as well as a retailer.

"§ 130A-309.100. Redemption arrangements for vending machines.

Any operator of a vending machine may elect to arrange with a certified redemption center, within five miles of the location of the vending machine, to redeem beverage containers from the vending machine. The vending machine operator shall post on each vending machine the name and address of the redeeming redemption center.

"§ 130A-309.101. Beverage Container Litter Reduction Account.

(a) The Beverage Container Litter Reduction Account is created in the Department, to be administered by the Department. The Beverage Container Litter Reduction Account is a nonreverting fund that consists of refund values remitted by distributors to the Department under G.S. 130A-309.98 and credited to the Account. Interest earned shall accrue to the Account.

(b) The Beverage Container Litter Reduction Account shall be used to fund the following:

(1) The costs to the Department for administering this Part.

(2) Payments by the Department to certified redemption centers, nonprofit drop-off programs, and curbside programs as reimbursement for refund values and for any administrative costs required under G.S. 130A-309.97.

(3) A reserve for contingencies in the following amount:

a. A reasonable and prudent amount determined by the Department, not to exceed one million dollars (\$1,000,000).

b. During any calendar year, the reserve shall not be greater than an amount equal to one-fourth of the total amount paid as reimbursements under subdivision (2) of this subsection during the preceding calendar year, plus any interest on that amount.

(c) The Unredeemed Beverage Container Deposits Account is created in the Department, to be administered by the Department. After all expenditures under

subsection (b) of this section have been made, the balance remaining in the Beverage Container Litter Reduction Account shall be credited to the Unredeemed Beverage Container Deposits Account. The Unredeemed Beverage Container Deposits Account may be used for all of the following purposes:

- (1) For urban, rural, and recreational litter abatement and recycling activities or grants.
- (2) For recycling information, education, and promotion.
- (3) For incentive payments to encourage the establishment of certified redemption centers in convenience zones in underserved or rural areas.
- (4) For public education programs directed at reducing litter.

"§ 130A-309.102. Additional penalties.

(a) A person may be assessed a civil penalty not to exceed one thousand dollars (\$1,000) per violation if the person does any of the following:

- (1) Sells or offers for sale beverages in containers not labeled in accordance with G.S. 130A-309.93.
- (2) Operates a redemption center without obtaining a certificate under G.S. 130A-309.96.
- (4) Makes a report pursuant to G.S. 130A-309.103 that is false.

(b) The Department may examine the accounts and records of distributors and may assess a penalty of ten percent (10%) per year, plus interest, for underpayments of the refund value for beverage containers to be credited to the Beverage Container Litter Reduction Account. The Department may also impose a civil penalty of fifteen percent (15%) of the amount due for payments up to a month late and a five percent (5%) additional penalty for each month the payments continue to be unremitted.

"§ 130A-309.103. Reports.

(a) Every distributor who sells or offers for sale in this State beverages in beverage containers shall report to the Department no later than April 15, 2008, and quarterly thereafter, the number of beverages in beverage containers sold, by material type and size and weight, and by any other manner prescribed by the Department.

(b) No later than July 1, 2008, and annually thereafter, the Department shall determine and shall include in its report all of the following:

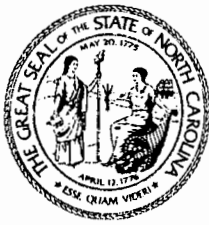
- (1) A summary of the information contained in the distributors' reports under subsection (a) of this section.
- (2) The status of beverage container recycling opportunities throughout the State, together with any recommendations on methods to enhance the opportunities for all consumers in every region of the State to return empty beverage containers conveniently, efficiently, and economically.
- (3) An analysis of the total amount of funds used for program administration and for reimbursement payments to redemption centers, nonprofit drop-off programs, and curbside programs and an analysis of how funds in the Unredeemed Beverage Containers Deposit Account are distributed and used under G.S. 130A-309.101(c).

- 1 (4) The economic impact of this Part on North Carolina retailers,
2 distributors, and manufacturers of beverages and their containers.
3 (5) The problems, if any, incurred in the distribution, sale, and return of
4 beverage containers attributed to the enactment of this Part.
5 (6) The effectiveness of this Part in reducing the proportion of empty
6 beverage containers in litter found along the State's roads and
7 highways and along its streams and rivers.
8 (7) The effectiveness of this Part in increasing recycling or reuse of
9 beverage containers.
10 (8) The costs incurred in the administration of this Part.
11 (9) Any recommendations or administrative or legislative proposals
12 considered appropriate to improving the effectiveness of this Part in
13 achieving its purposes.
14 (10) Any other information the Department determines is pertinent to
15 achieving the purposes of this Part.

16 (c) The Department may require any retailer, distributor, or certified redemption
17 center to provide that information concerning its compliance with this Part that will
18 enable the Department to prepare its report under this section."

19 **SECTION 2.** In order to be assured that sufficient funds have accrued in the
20 Beverage Container Litter Reduction Account created in G.S. 130A-309.101, as enacted
21 in Section 1 of this act, for the payment of refunds for beverage containers under Part
22 2E of Article 9 of Chapter 130A of the General Statutes, as enacted in Section 1 of this
23 act, the Department of Environment and Natural Resources shall establish the date, no
24 later than July 1, 2008, for redemptions of beverage containers to commence.

25 **SECTION 3.** G.S. 130A-309.95(a), 130A-309.95(b), 130A-309.97, and
26 130A-309.101(b), as enacted in Section 1 of this act, become effective April 1, 2008.
27 The remainder of this act becomes effective January 1, 2008, and applies to beverage
28 containers sold or offered for sale on or after that date.



SENATE BILL 215: Litter Reduction Act of 2007

BILL ANALYSIS

Committee:	Senate Ref to Commerce, Small Business and Entrepreneurship. If fav, re-ref to Finance	Date:	July 17, 2007
Introduced by:	Sen. Berger of Franklin	Summary by:	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: *Senate Bill 215 would require a deposit to be collected on all beverage containers sold at retail and establishes a system for the collection of beverage containers and the redemption of the containers for the deposit. The bill would also require all beverage containers to be made of recyclable or recycled materials.*

CURRENT LAW: Currently, there is no requirement for beverage containers to be refundable for deposit or that the containers be made of recyclable or recycled materials.

BILL ANALYSIS:

G.S. 130A-309.93 requires consumers to pay a beverage containers refundable deposit of 10¢ at the time of purchase. The container shall be labeled with the North Carolina refundable deposit amount. This section also requires that all beverage containers sold on or after January 1, 2008 be made of recyclable or recycled materials. If after 5 years the return rate for recyclable beverage containers is less than 75%, the refund rate may be increased an additional 5¢.

G.S. 130A-309.94 requires retailers of beverages in beverage containers to pay the beverage distributor the amount of the deposit at the time of purchase and to collect deposits from the consumers at the time of sale. The retailer shall post notice of where beverage containers may be redeemed.

G.S. 130A-309.95 provides for the establishment of redemption centers and redemption locations geographically located within reasonable proximity to supermarkets. Redemption centers are to be operated at least 30 hours per week, at least five hours a day, Monday to Friday between 9:00 a.m. and 5:00 p.m.

G.S. 130A-309.96 requires the certification of redemption centers. Redemption centers must accept all recyclable beverage containers and must pay the refundable deposit upon redemption.

G.S. 130A-309.97 requires that redemption centers, nonprofit drop-off programs, and curbside recycling programs be reimbursed the refund value of all beverage containers redeemed by these entities. Redemption centers and nonprofit drop-off programs are entitled to an additional 2% administrative cost.

G.S. 130A-309.98 requires distributors of beverages in beverage containers to pay to the Department of Environment and Natural Resources (DENR), the refund value of every container sold or transferred to a retailer, less a 1% administrative fee.

G.S. 130A-309.101 establishes the Beverage Container Litter Reduction Account in DENR. The Account is to be funded with refund deposits paid by distributors. The fund is to be used to reimburse redemption centers, nonprofit drop-off programs and curbside programs for the refund values of beverage containers redeemed. This account shall also cover the administrative cost of the program and provide grants for other litter abatement and recycling programs.

EFFECTIVE DATE: The bill becomes effective January 1, 2008 and applies to beverage containers sold on or after that date.

S0215e1-SMRU

**Testimony to the N.C. Senate Finance Committee, July 17, 2007
on Senate Bill 215**

**by Fred Broadwell, Principal,
Sustainable Economies Consulting
Durham, NC
www.sustainable-economies.com**

As an economic development consultant, I would like to make these points about S215.

Senate Bill 215 is a jobs bill, pure and simple.

Recycling is a key industry for this state and the nation. In North Carolina, recycling employs over 15,000 people. Nationally, it supplies three times more jobs than mining and more jobs than the auto industry. Recycling is not just a feel-good activity; it is one of the backbones of the global economy.

Why deposits? Today there is a chronic shortage of material feedstock for North Carolina's recycling industry, particularly plastic. Just last week I heard presentations from representatives of the PET plastic and HDPE plastic industries at a meeting in Salisbury. Both plastic industries have a very large presence in North Carolina. They cannot get enough feedstock.

NAPCOR, the association of PET container makers (soda bottles), has traditionally opposed deposit legislation. They did not want to offend their clients, the bottling industry. Recently, however, they have changed their minds. Now they are officially neutral on deposits. Why? Their members are desperate for supply. In the last year, two large U.S. plastics plants have shut down. Plant closings and delayed expansions are not what we need. Everyone knows that deposits will boost supply. Trying to boost beverage recycling with alternative methods, not deposits, is like digging a hole with thimbles when a shovel is lying around. Manufacturers have been cowed by the bottle industry for a long time, but they are starting to break ranks. Bottlers' influence fades when fellow businesses are losing money.

One other key point: Most experts now agree that deposits do not hurt curbside programs. A major study by the Congressional Research Office concluded this. Curbside is more prevalent in deposit states than in non-deposit states. Many believe that curbside programs actually do better with deposits in place.

More personally, S 215 will reduce litter and as a clean-up volunteer I welcome that. 95% of the litter I pick up in creeks is bottles and cans. But, to conclude, the most vital reason to pass S215 is the jobs.

Thank you.

HELP FIGHT LITTER!

SUPPORT THE LITTER REDUCTION ACT OF 2007 (SENATE BILL 215)

**INTRODUCED FEB. 20, 2007 BY SENATOR DOUG BERGER
FRANKLIN COUNTY WITH 4 CO-SPONSORS: COWELL, GOSS, GRAHAM,
KINNAIRD**

- *Growing Problem of litter on our roads and in our waterways.
- *Volunteer clean-up groups are becoming discouraged.
- *40 to 60% of highly visible and long lasting litter is aluminum, glass, and plastic beverage containers.
- *Require a 10 cent deposit on each beverage container sold in N.C.
- *Experience in other states with deposit legislation shows that:
 - 70 to 95% will be redeemed rather than discarded, and
 - Total litter reduction will be 30 to 65%.
- *This is not a new concept! Many N.C. citizens remember taking bottles back for 2 cent deposits, when they were kids.
- *Because of inflation, a 10 cent deposit is now necessary.
- *Strong public support in 11 other states that have deposit legislation (90% in Iowa, and 70% overall in nationwide polls.
- *No state has ever repealed deposit legislation once enacted.
- *Refunds are obtained at conveniently located state certified redemption centers.
- *Grocery stores and retail outlets are NOT responsible for taking back empty containers.
- *200 billion containers sold each year
- *130 billion are wasted (landfilled, incinerated, or strewn as litter across our beautiful land.
- *Energy wasted in replacing these discarded containers is equivalent to:
 - 50 million barrels of crude oil, or enough to meet the total energy needs of 3 million households.
- *Litterers are penalized by losing 10 cents for each container they throw out on roads and into streams.
- *Volunteers who pick up containers are rewarded by redeeming them for 10 cents each.
- *Many jobs will be created in private enterprise, both in redemption centers and in the recycling industry.
- *Tourism is enhanced as we clean up our roads, waterways, and beaches, from the mountains to the sea!
- *Don't let the opposition lobbyists deceive you. They will spend millions and make many inaccurate statements in an attempt to defeat this worthwhile and needed legislation.
- *The Act has been referred to the Senate Commerce Committee where 26 Senators (17 Democrats and 9 Republicans) will determine its fate.

*Please concentrate your efforts on writing personal letters or short notes to these key Senators. Let them know that you are impatient, and ask them to ignore the opposition lobbyists and give their support to SB 215 NOW!

Their addresses are as follows:

To: The Honorable Senator _____
North Carolina General Assembly
16 West Jones Street
Raleigh, N.C. 27601

*Individual Senator name, party affiliation, and primary county of residence is as follows:

District	Party	County	Name
7	D	Franklin	Senator Doug Berger
8	D	Columbus	Senator R.C. Soles
43	D	Gaston	Senator David Hoyle
19	D	Cumberland	Senator Tony Rand
48	R	Henderson	Senator Tom Apodaca
26	R	Rockingham	Senator Phil Berger
22	R	Moore	Senator Harris Blake
9	D	New Hanover	Senator Julia Boseman
46	D	Rutherford	Senator Walter Dalton
28	D	Guilford	Senator Katie Dorsett
24	D	Alamance	Senator Tony Foriest
41	R	Gaston	Senator Jim Forrester
32	D	Forsyth	Senator Linda Garrou
35	R	Union	Senator Eddie Goodall
45	D	Wilkes	Senator Steve Goss
40	D	Mecklenburg	Senator Malcolm Graham
27	D	Guilford	Senator Kay Hagan
15	R	Wake	Senator Neal Hunt
44	R	Burke	Senator Jim Jacumin
5	D	Wayne	Senator John Kerr
14	D	Wake	Senator Vernon Malone
49	D	Buncombe	Senator Martin Nesbitt
39	R	Mecklenburg	Senator Robert Pittenger
25	D	Scotland	Senator Bill Purcell
21	D	Cumberland	Senator Larry Shaw
17	R	Wake	Senator Richard Stevens

Litter Reduction Act of 2007

Senator Doug Berger
7th District



Prepared by Ericka Shearin, Intern
Senator Doug Berger

What's happened to the Clean Roads State?



Capital Blvd.
near
Youngsville, NC

Litterbugs trash N.C. from mountains to sea

Many regard roadsides as personal trash cans



Bags of litter, collected by Wake Correctional Center inmates, lie beside westbound Interstate 40 near Raleigh-Durham airport.

Staff Photos by Robert Willett

The News and Observer, Sunday, April 2, 2006

Many groups trying to clean up!

Types of Groups:

- Adopt-A-Highway
- Big Sweep/Litter Sweep
- Great American Clean-Up
- DOT Clean up Crews

Losing Battle:

- Volunteers discouraged
- Public becoming impatient
- Replace rhetoric with **ACTION!**

The TIME HAS COME: The Litter Reduction Act of 2007

Two Approaches

1. Continue throwing away taxpayers' money by picking up the litter after it is thrown out
-OR-
2. Attack the problem at the source and prevent litter from happening in the first place.

Where to START?

- 40 to 60% of highly visible and long-lasting litter is **ALUMINUM, PLASTIC, AND GLASS** beverage containers.



- Require a **10¢ Deposit** on each beverage container sold in North Carolina.
- Experience in 7 states with Deposit Legislation shows that:
 - 70 to 95% of beverage containers will be redeemed rather than discarded
 - Total litter reduction will be 30-65%.

Features of the Act

- Significantly different from other States
- Designed to overcome the objections of beverage industry lobbyists.
- Distributors and retailers will have significant roles in collecting deposits, BUT
- Burden of taking back cans and bottles is shifted to redemption centers certified by DENR.

Magnitude of the Problem

- 200 Billion Beverage Containers are manufactured and sold in the US each year.
- 130 Billion are landfilled, incinerated, or strewn as litter across our beautiful land.



WASTED ENERGY!!!

- Energy wasted in replacing these discarded containers is equivalent to:
 - 50 million barrels of crude oil, which is enough to meet the total energy needs of 3 million households

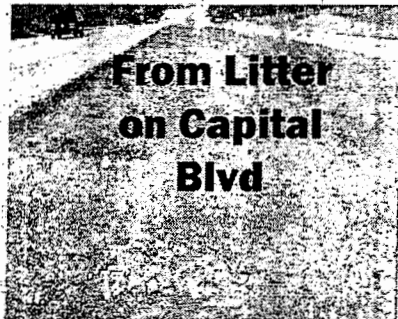
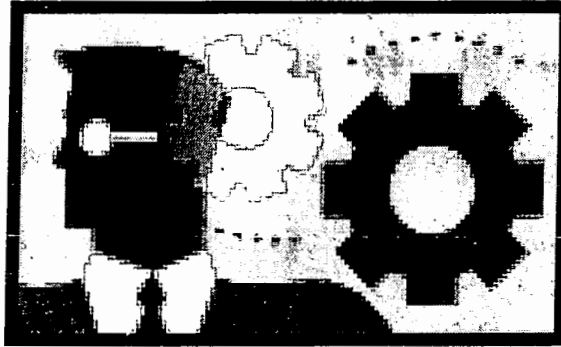


Positive Aspects of the Act

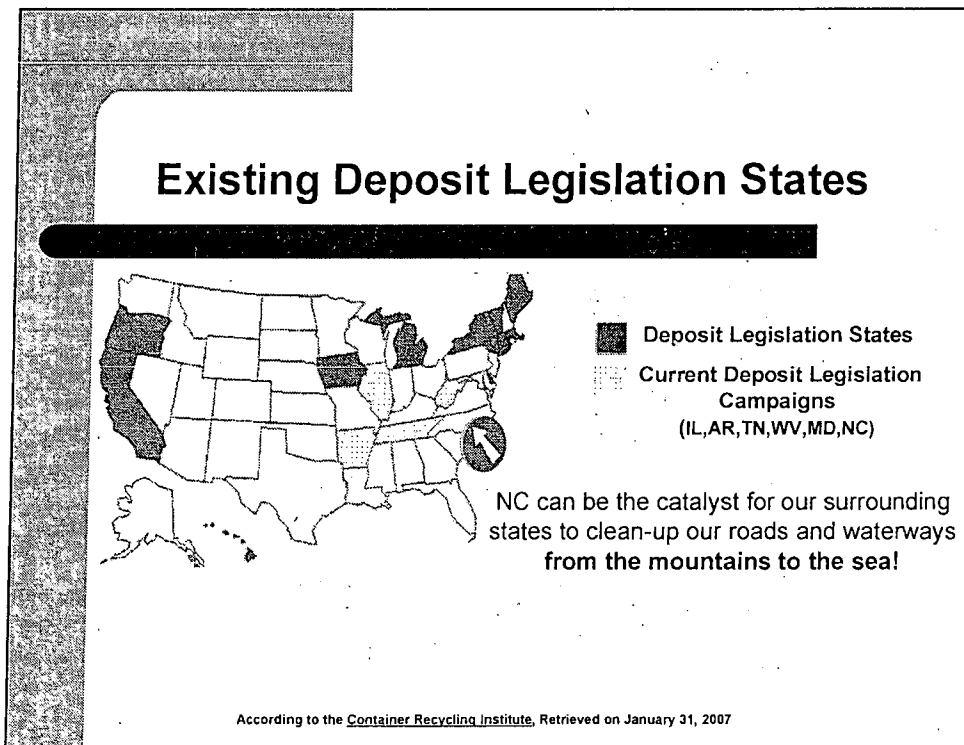
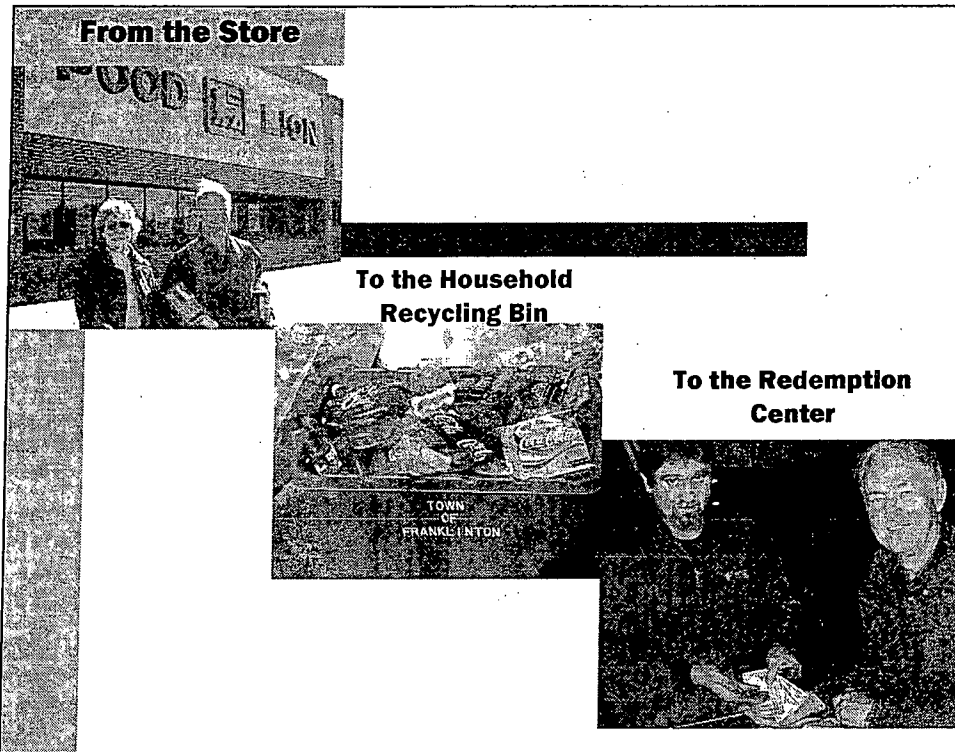
- This is not a tax and no taxpayer appropriation is necessary.
- Other states' experience shows that revenue from unredeemed deposits can TOTALLY FUND the Litter Reduction Act, once in place.
- Will REDUCE the \$16 MILLION taxpayer dollars that DOT spends for Roadside Clean-Up, annually.
- Volunteers are rewarded by turning in containers for 10¢ each.
- Provides a source of revenue for various groups such as girl scouts, churches, and towns, which can accept donated containers.
- Extends life of landfills.
- Creates jobs and promotes tourism!



How will it work?



To Cash In volunteer's pocket



CITIZENS ARE READY!!

- Public Support for Deposit Legislation
 - 72% in Maine
 - 84% in New York
 - 90% in Iowa
 - **70% overall in Nationwide Polls**

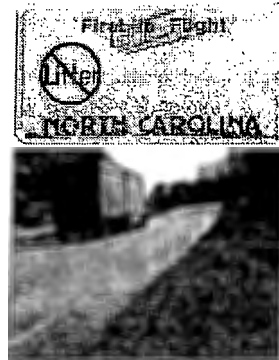
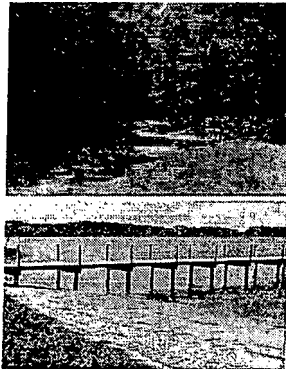
ONCE ENACTED, NO STATE'S DEPOSIT LEGISLATION HAS EVER BEEN REPEALED!

This is the WRONG way!

12 sec
Video clip
w/ litter
on Capitol Blvd

Let's Keep NC Clean and Green!

By enacting the LITTER REDUCTION ACT OF 2007



We can once again become the
CLEAN ROADS STATE!

A Proposed Tax on North Carolina Consumers

SB 215: An Ineffective Solution to Reducing Litter

Senator Doug Berger (D-Franklin)



SB 215 would add a 10¢ deposit to the price of every beverage container sold in North Carolina starting January 1, 2008. The price increase would apply to milk cartons, beer cans, juice bottles, drink boxes, and every other beverage container made of glass, plastic, metal or paper from two ounces to over a gallon.

A Forced Deposit Would Hurt North Carolina Businesses

- ✓ **A 10¢ price increase on every beverage sold would drive consumers over the State line to shop.** Based on research, food stores in border counties can expect to lose more than 5% of their total sales to neighboring states. That means fewer food store jobs, lower state tax revenues, and a weaker business climate in the state. North Carolina has 40 border counties with over 2.65 million residents!

A Forced Deposit Would Make North Carolina a Dumping Ground

- ✓ **Fraud from “out of state” containers is a problem in a deposit state.** It would drain money out of the state’s fund.
- ✓ **Citizens in all of our neighboring states—none of which have a forced deposit—would bring their empty beverage containers into North Carolina for redemption.** Consumers buying products outside the state and fraudulently redeeming them in North Carolina would make the Tar Heel state a dumping ground for our neighbors. The criss-crossing interstate highway system through NC would expand the fraud problem.

A Forced Deposit Would Quickly Become a Regressive Tax

- ✓ **Consumers wouldn’t have a convenient way to get all of their 10¢ deposits back.** For many consumers, getting to a “redemption center” would be difficult and inconvenient. For consumers unable to return containers to the center, *the deposit becomes a 10¢ per container tax*, and would hit hardest on the elderly and large families.
- ✓ **Taxing milk, water, and juices hits families and low-income consumers hardest.** Adding 10¢ to the price of these staple products is unfair and discriminatory. The tax burden would likely grow as mandated costs to North Carolina retailers get passed through to consumers.
- ✓ **The 10¢ charge probably would not be refunded to consumers for the first six months (Sec. 2 of the bill).** So, the state would take away hundreds of millions of dollars of consumers’ money before it would pay back the **first dime in refunds**. Unless consumers stored all their empty containers for six months, the state would keep all the money!

A Forced Deposit is Inefficient and Ineffective

- ✓ **A Forced Deposit would do little to help the environment.** As a stand-alone effort, a forced deposit would offer little benefit for litter control or recycling. Targeting beverage containers would only address less than **10% of roadside litter** and **4% of solid waste**.
- ✓ **It would be costly to operate and administer.** A forced deposit is the most expensive and inefficient way to address litter control and recycling.
- ✓ **It would penalize and hinder existing effective recycling programs.** Carbonated beverage container materials alone account for a significant percentage (up to 70%) of all revenue earned in a curbside program. A forced deposit scheme would compete for this material, and ruin the economics of these important recycling programs.

This is No Way to Promote Recycling

- ✓ **Convenient access to recycling at home is the key to a good recycling program.** Two-thirds of beverage containers are consumed at home. Forcing consumers to store beverage containers separately from all their other recyclables and make a separate trip to recycle them is wasteful and inefficient. A forced deposit would disrupt the growth and progress towards comprehensive recycling in rural and urban NC.
- ✓ **Comprehensive recycling programs are better for everyone.** They foster a convenient way to recycle all materials, not just beverage containers. The market value of beverage containers helps to support the collection of all recyclable materials.

NC Retail Merchants Association

NC Beer and Wine Wholesalers Association

NC Beverage Association

NC Petroleum Marketers Association

NC Association of Convenience Stores

NC Restaurant & Lodging Association

NC Service Station Dealers Association

NC Vending Association

NC Association of ABC Boards

NC Chamber

Anheuser-Busch Companies

Central Carolina Bottling Company

Coca-Cola

Cheerwine

Coors

Distilled Spirits Council of the US

Food Lion

Harris Teeter

International Bottled Water Association

Kerr Drug

Le Bleu

Miller Brewing Company

The Pantry

Pepsi-Cola

Smith's Mountain Bottled Water

South Atlantic Bottled Water Association

Testimony of Kevin Dietly, Northbridge Environmental Management Consultants, In Opposition to SB 215

I appreciate the opportunity to come to Raleigh to discuss litter control and recycling policy and, in particular, the role of beverage container deposits. I am Kevin Dietly, a Principal at Northbridge Environmental Management Consultants in Westford, Massachusetts. I have worked on the implementation and analysis of deposit laws around the world for 20 years. As an economist, I have focused primarily on the economic aspects of deposits and other recycling systems. I am here at the request of a coalition of North Carolina retailers and beverage companies.

At the outset I would like to highlight three main points in my testimony:

- **We can and should do a better job managing our solid wastes.** Our challenges include controlling mismanaged waste, which we typically call litter, and increasing the amount of recycling so we use our limited resources more wisely. Both of these can be justified on economic, environmental, and social grounds.
- **A beverage container deposit law or "bottle bill," however, is a poor way to achieve these environmental goals.** These laws draw an arbitrarily narrow bead on a very small part of the problem we are trying to address and cause unintended and damaging consequences:
 - **High costs:** Deposits are the most expensive way to recycle or clean up litter.
 - **Undermining existing recycling programs:** Deposit laws take revenue away from existing recycling programs and could jeopardize their existence.
 - **Fraud:** Illegal redemption activities are common in deposit states and SB 215 would make North Carolina a haven for fraud.
 - **Increased emissions:** Additional consumer and commercial vehicle traffic to redeem and collect containers means significant new energy use and greenhouse gas emissions.
- **This particular piece of legislation is badly flawed.** It would not achieve even the limited objectives it has set for itself and would have serious impacts on North Carolina consumers, businesses, and state and local governments.
 - **Anti-consumer:** The bill creates a regressive new tax on every beverage container and does not provide convenient ways for consumers to get their money back.
 - **Anti-business:** SB 215 will drive retail business out of the state. Total food store sales in border counties will fall by at least five percent taking with them jobs and tax revenues.

- **Financial risk for state and local governments:** The state bears the risk of fraudulent redemption, because it will be paying out refunds on empty containers brought in from other states. This could easily bankrupt the new fund. Meanwhile, local governments must deal with the lost commodity revenue when bottles and cans that are currently recycled are shifted into the redemption system. Those losses could jeopardize recycling programs throughout the state.

Provisions of SB 215

The proposed law draws from deposit programs in place in eleven other US states – all but one of which were adopted more than 20 years ago. This proposal, however, is unlike any other deposit program in the US or around the world.

All ready-to-drink beverages in containers up to four liters would carry a 10¢ deposit value. Every beverage would be included, from baby juice to bourbon. Every container would be included as well including drink boxes, milk cartons, cans, and glass and plastic bottles.

The deposit would be charged to consumers at the time of sale; retailers that collect deposits from consumers would remit those deposits to the beverage distributor who would turn these deposits over to a new state fund. From this fund, the state would pay out (1) refunds for containers returned to newly established “redemption centers,” (2) fees to the redemption centers, and (3) administrative expenses.

The state would designate “convenience zones” across the state. Anyone can apply to open a redemption center in each convenience zone, subject to the state’s approval. Consumers can only return containers and collect a refund of their deposits at these redemption centers.

Any deposits left in the state fund would be used to help underwrite the establishment of redemption centers in rural areas and for other litter and recycling efforts.

1. Waste Management Issues

Each of us generates waste every day at home, at work, and at play. We all make decisions every day about how we manage that waste; collectively we recycle or reuse about one-third of what we produce. That’s good – and better than it was 10 to 15 years ago – but we still throw away a lot of materials that have value as commodities. These discards are potential raw material inputs to industrial and commercial practices that, if better utilized, would save on energy consumption, greenhouse gas emissions, and other air and water emissions.

We can increase the amount of waste recycled by giving individuals the *opportunity* to recycle through efficient, effective programs; by giving them an *incentive* to recycle; and by *educating* them about the importance of doing so and how to do it.

The waste we do not recycle or reuse is nearly all burned for energy recovery or landfilled. A very small part of the waste we produce ends up outside the waste management system as litter – sometimes called “waste in the wrong place.” About 2/3 of all litter is accidental according to current research. Accidental litter occurs when materials blow out of an unsecured load on a

truck or out of an overfilled trash container. The remaining 1/3 of litter is the result of an intentional act where someone knowingly throws something out a car window or onto the ground.

We control litter by reaching out to litterers to tell them their actions are unacceptable and, inevitably, we must clean up the litter that still appears on our roads and parks and beaches.

We know a lot about how to control litter and enhance recycling. And we know that these issues extend far beyond beverage containers. Next I would like to provide some context for beverage containers in litter and waste stream.

2. Beverage Containers in Litter and the Waste Stream

Beverage containers of all kinds represent about 7.4 percent of littered items according to 17 litter surveys conducted around the US and Canada between 1989 and 2006 (see table).¹ Some of the more significant components of litter are take-out food packaging (about 20 percent) and candy and snack wrappers (about 13 percent).

Type of Beverage	Share of Litter*
Carbonated beverage containers (CSDs and beer)	6.1%
Noncarbonated beverage containers (alcoholic and nonalcoholic)	1.3%
All Beverage Containers in Litter	7.4%

** Averages from 17 studies in the US and Canada between 1989 and 2006*

Even if SB 215 were wildly successful at reducing beverage container litter in North Carolina, the bill would ignore more than 90 percent of all litter. That means that despite the cost and effort devoted to redeeming containers, all the same litter control programs that exist today in the state would still exist. There would be no savings on litter control because so much of the problem would still be there. More broadly focused litter control programs of the types that are well ensconced in North Carolina (like Adopt a Highway) are far more effective at reducing overall litter. These programs also control litter for a fraction of the cost of deposit/refund systems for beverage containers.

Deposit programs are not a prerequisite for a clean state. In fact, many nondeposit states have less litter than deposit states because they have programs that focus on the whole problem, not just a few percent of it.

If we shift our attention from litter to the entire waste stream, we find that beverage containers of all types and materials represent about five percent of the waste we produce.² The most valuable materials in the waste stream are beverage containers – aluminum cans and PET and HDPE plastic bottles. These materials command the highest prices of any commodity in household waste. Therefore, these materials are already widely recycled. A deposit law would transfer those materials from the existing recycling system to a new beverage container redemption

¹ "Sweating the Litter Things," *Resource Recycling*, May 2005, p.25 and more recent studies completed in Georgia and Tennessee.

² Based on industry figures and aggregate data from "Municipal Solid Waste in the United States, 2005 Facts and Figures," US EPA, <http://www.epa.gov/epaoswer/non-hw/muncpl/msw99.htm>.

system. At best, however, the impact of an all-beverage deposit law on the state's recycling rate would be an increase of only one or two percentage points.

3. Problems Common to All Deposit Systems

Adopting a beverage container deposit law means that a state has chosen to create a separate system for managing beverage bottles, cans, and cartons – a system that is separate from and, in many cases, duplicates existing recycling infrastructure. The key consequences of a separate recovery system for beverage containers are higher costs, adverse impacts on existing recycling systems, incentives for fraudulent behavior, and additional vehicle emissions associated with redemption. We address each of these briefly below.

a. High Costs

Deposit/refund systems are the most expensive way to recycle beverage containers or to control beverage container litter. Northbridge research and studies by others consistently show that actual deposit system costs far outweigh the cost of recovering containers through curbside or other conventional recycling programs. For “traditional” deposit programs that include only beer and soft drink containers, the cost of recycling is three to four times higher per ton of material than for curbside programs. Where traditional deposit programs have expanded to include noncarbonated beverages as well, their costs soar even higher.

From a litter control perspective, deposits are much costlier than other forms of litter control – even paid collection programs. Research summarized in a recent journal article suggests that deposits cost three to four times as much as a paid pickup program and nearly 20 times as much as a comprehensive system that combines cleanup, prevention, and outreach efforts.³

b. Undermining Successful Recycling Programs

One certain impact of a deposit program in North Carolina is that it would compete with the existing recycling programs set up at the state, county, and local levels. Millions of taxpayer dollars have been invested in these systems, which are designed to capture a wide range of materials from paper products to cans, bottles, and organic wastes. These programs focus on collecting commodities, not just certain types of packaging or materials. Handling materials in bulk, without the sorting, separating, and counting that is required in a deposit system, makes for a much less expensive and far more efficient recycling infrastructure.

Unfortunately, deposit systems target some of the most valuable commodities in the waste stream – aluminum and plastic bottles. These materials may provide as much as 70 percent of the revenue earned in a community recycling program. If these beverage container materials were diverted to a competing recovery system like a deposit/refund system, communities would lose that revenue and would need to cut back on recycling, or cut other programs to keep the recycling program operating.

Two major recycling companies recently announced their opposition to legislation to expand existing deposit programs in Connecticut and New York because of this issue. FCR Recycling

³ *Op.cit.*, Note 1, p. 29.

(headquartered in Charlotte) determined that a planned expansion of Connecticut's bottle bill to include noncarbonated beverages would cost it \$900,000 per year in lost revenue in the state – some of which it shares with local communities and some of which offsets the cost of major investments made in Connecticut recycling infrastructure. FCR's analysis of the adverse impact on recycling caused the state's recycling authority to oppose the expansion proposal as well.

Similarly, New York City's recycling contractor announced in February that it could not meet the financial obligations of its long term recycling contract with the City if additional aluminum cans and PET bottles were included in the deposit system and removed from the curbside program. The firm estimated an annual revenue loss of \$3.1 million per year from the expanded bottle bill.

c. Incentives for Fraud

Creating an arbitrary 10¢ value on every beverage container sold in North Carolina, regardless of its inherent commodity value, means that individuals and businesses will seek to profit from defrauding the state. It is a simple matter to bring a container from outside a deposit state and redeem it in the deposit state – this practice occurs every day on both a small and large scale. Organized fraudulent redemption occurs throughout the deposit states and is most severe where the deposit is highest (Michigan at 10¢) and where the state is surrounded by nondeposit states.

Massachusetts has probably done the most research on fraud and state estimates peg the amount of fraud at up to 11 percent of all containers redeemed for refund. In certain parts of the state, fraudulent returns may account for as much as 30 percent of returns.

North Carolina would set itself up as the redemption fraud capital of the US. Millions of dollars would flow from the state fund to fraudulent redeemers and there is no practical way to stop it. Consider that a 10¢ deposit on a case of water bottles (which sells for \$3.99 on sale) represents a 60 percent markup on the price of the product. A North Carolina consumer that lives near the border could purchase the water for \$3.99 in a neighboring state and then redeem the containers for \$2.40. His savings, \$4.80, not only covers the cost of the water, it provides an \$0.81 profit in the process. This is a formula for financial ruin for the program as well as damage to North Carolina's retail sector.

d. Increased Vehicle Emissions

Deposit/refund programs shift most beverage container recycling over to a separate system. Instead of recycling by leaving containers with other recyclables at the curb or taking them to a dropoff center with other recyclables, consumers must travel to redemption centers. Where redemption centers are located at food stores, this may not require additional travel, but in many cases, redemption requires a special trip. That trip is not only costly in terms of time spent, but it means more miles driven, more gas used, and more emissions and greenhouse gases.

Furthermore, additional trucks must be put into service to make the rounds of these redemption centers and collect empty containers, all while local recycling programs continue their truck routes to handle the remaining recyclables.

The environmental consequences of this additional travel can be significant. Research in Vermont suggests that greenhouse gas emissions from this additional travel represent millions of

additional miles traveled each year. This is no way to develop sustainable recovery systems for beverage containers.

4. Specific Issues with SB 215

This bill is anti-consumer, anti-business, and exposes the state and local communities to significant financial risk. Furthermore, many containers returned for refunds might end up in landfills anyway.

a. Consumer Impacts

The most obvious impact to consumers is the enormous price increase resulting from the imposition of a 10¢ deposit on every beverage container sold. In the case of smaller packages including drink boxes and water bottles, this price increase represents a substantial share of the price of the product. For lower income consumers, the deposit is a very regressive price increase that will impact these consumers the most.

Proponents of deposits will argue that this is merely a deposit and can be redeemed readily, but this bill does *not* make it easy for consumers to get back the hundreds of millions of dollars they must pay each year in deposits:

- Redemption centers are not even required to take back containers until July 2008 – six months after consumers start to pay. For six months, then, the “deposit” is really nothing more than a 10¢ tax on every bottle, can, and carton of beverages sold in North Carolina.
- The bill offers no assurances to consumers that they will have redemption opportunities near their homes. SB 215 assumes that redemption centers will spring up across the state, but there are no guarantees that they will. The only funding provided in the bill is a 2% administrative fee for centers. A typical redemption center in another deposit state might handle 300,000 containers per month; SB 215 would provide the operator of that center \$600 per month in compensation – barely enough to pay utility bills let alone pay for rent and staff.
- Ironically, the harder it is for consumers to get their money back, the better it is for the state, because the state won't have to pay out refunds. That makes the refundable deposit look all that much more like a tax.

b. Business Impacts

A 10¢ price increase on every beverage bottle, can, and carton would drive consumers across state lines to shop. In states with deposits on beer and soda only, food stores in border counties have lost 4.6 percent of their total sales through a combination of higher prices and lost business to neighboring states.⁴ The impact in North Carolina would be much more severe because many more products are subject to deposits and the deposit would be 10¢ -- twice what it is in every other deposit state (except Michigan).

⁴ University of Kentucky Center for Business and Economic Research, “The Economic Impact of a Container Deposit Program in Kentucky,” March 1999.

Consumers do not limit their cross-border purchases to beverages; this bill would adversely affect many parts of the retail industry, its suppliers, and its employees. That means lost jobs and lost tax revenue for the state.

c. Government Impacts

The Department of Environment and Natural Resources would need to develop a system for tracking and managing monthly deposit payments from hundreds of beverage companies, both in North Carolina and outside the state.

The key risk for the state is if SB 215 ends up costing the state millions instead of being a money-maker as its supporters claim. This risk is significant because of the risk of fraud, which would force the state to pay out dimes on containers that never paid into the fund. Experience with redemption rates in Michigan where the deposit is also a dime shows that few unclaimed deposits remain. North Carolina's borders are far more extensive than Michigan's and SB 215 includes a much broader range of beverages than Michigan. One place where redemption centers will be convenient and abundant will be along the borders. It is very possible that fraud will draw down the available funds to the point that the fund will become insolvent.

While the state deals with the risk of fraud, local governments must deal with lost revenue as the cash crops of the recycling system (aluminum, PET, and HDPE) are harvested by the redemption system. This bill could endanger the viability of existing recycling programs all across North Carolina.

d. Wasted Effort

Finally, SB 215 would put deposits on containers for which there are limited or no recycling markets. For example, technology does not exist in many places to convert paperboard milk and juice cartons and drink boxes back to raw materials. Furthermore, some flexible packaging cannot be recycled. Redemption centers that collect these containers would likely throw them away, making the deposit and all the expense associated with redeeming the containers unnecessary.

Conclusions

SB 215 is the wrong answer to the right question. We can and should do more to improve our waste management systems and extract more of the valuable commodities from our trash. Incurring the high economic and environmental costs of a bottle bill, however, is not the right course of action. Furthermore, this particular bill proposes a redemption system that will tax consumers, damage local businesses, and expose state and local governments to significant fiscal risk.

Our industries are engaged with many partners around the country to promote and enhance recycling and litter control efforts. We have a responsibility to help make the waste management system more efficient and effective. We are always seeking opportunities to broaden our partnerships and programs with governments and NGOs to improve litter control, increase recycling, and find sustainable ways to enhance the quality of our environment.

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee

07/17/07

Name of Committee

Date

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Sal Sal	WCSP
Randy Green	newborns NARA
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Becki Gray	John Locke Foundation
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Ken Kivison	AIG
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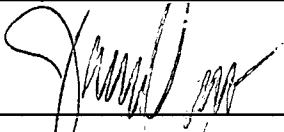
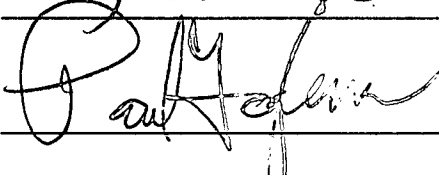
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Russ Dubisky	IFNC
Don McGonigle	MFS.
Gary Robertson	AP
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Gyan Bama	NRD
Kris Gardner	NCBWWA
Dean Plankett	NCBWWA.

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Brenda Ewadingen	KNC Beautiful
Ken Dyer	WCCCS
	Tyler Fox
Daniel Baum	KENNEDY COVINGTON
Patrick Buffkin	Nelson Mullins
Zeb Alley	" "
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Christine Wymer	Conservation Council

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07/17/07

Name of Committee

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Senate Commerce, Small Business and Entrepreneurship Committee
Thursday, July 19, 2007, 11:00 AM
1027, LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 73	Improve State Construction Process.	Representative Justice Representative Michaux, Jr. Representative Owens, Jr.
HB 265	Establish High-Risk Pool.	Representative Underhill Representative England, M.D. Representative Holliman Representative Insko
HB 514	Increase Length Limits for Transit Buses.	Representative Saunders
HB 773	Protect Military Personnel/Life Insurance.-AB	Representative Martin Representative Dickson Representative Lucas Representative Glazier

Other Business

Adjournment

SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE

**Thursday, July 19, 2007 at 11:00 a.m.
Room 1027, Legislative Building**

MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met at 11:00 a.m. on July 12, 2007, in Room 1027 of the Legislative Building. Twenty members of the committee were present. Senator R. C. Soles, Jr., Chair of the Committee, presided.

Senator Soles introduced the pages who were assisting in the meeting: James Allison and Alex Babbitt of Statesville, sponsored by Senator Jim Forrester; Emily Sigmon and Christian Berry of Catawba County, sponsored by Senator Austin Allran; Deona King and Andrea Chambliss of Durham County, sponsored by Senator Marc Basnight; and Thomas Yarboro of Wayne County, sponsored by Senator John Kerr.

Senator Soles recognized Representative Grier Martin to present HB 773, Protect Military Personnel/Life Insurance.-AB. Senator William Purcell moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Ms. Rose Vaughn Williams, Counsel, Department of Insurance, answered questions. Senator Floyd McKissick moved an unfavorable report of the bill, but favorable as to the committee substitute bill. The motion carried.

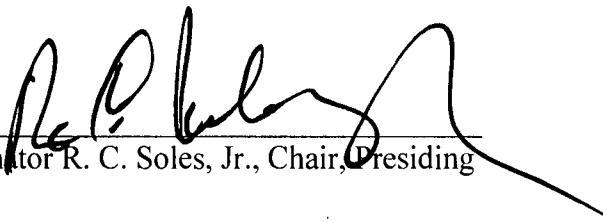
Senator Soles recognized Senator Dan Clodfelter to present HB 514, Increase Length Limits for Transit Buses, on behalf of Representative Drew Saunders. Senator Harris Blake moved the adoption of a proposed committee substitute for purposes of discussion. The motion carried. Senator Clodfelter explained that the bill had been converted from a local to a public bill. Senator John Kerr moved an unfavorable report of the bill, but favorable as to the committee substitute bill. The motion carried.

Senator Soles recognized Senator Stan Bingham to present HB 73, Improve State Construction Process, on behalf of Representatives Carolyn Justice, Mickey Michaux, and Bill Owens. Senator Tom Apodaca moved adoption of a proposed committee substitute for purposes of discussion. The motion carried. Mr. Jim Klinger, Fiscal Research Division, explained the bill. Mr. Wayne Goodwin, Assistant Commissioner, Department of Insurance, spoke in support of the bill. Senator Richard Stevens moved an unfavorable report of the bill, but favorable as to the committee substitute bill. The motion carried.

Senator Soles recognized Senator Tony Rand and Representative Verla Insko to present HB 265, Establish High-Risk Pool. Senator Rand moved the adoption of a proposed committee substitute. The motion carried. Senator Soles announced the Health and Wellness Committee had met and agreed to provide \$5 million for start up costs of the program to provide health insurance for high risk individuals. Senator Rand explained the newly devised funding mechanism for the pool and he and Representative Insko answered questions. Senator Walter Dalton moved an unfavorable report of the bill, but favorable as to the committee substitute bill. The motion carried.

Senator Soles commented that this was the last meeting of the Senate Commerce, Small Business and Entrepreneurial Committee that Dot Waugaman would be assisting with, and he asked her to make a few comments about her career at the General Assembly and her observations of the Commerce Committee. Dot said she had appreciated working here, had enjoyed making the senators look good both as a legislative assistant and as Director of the Office of Senate Legislative Assistants. She commented that it was interesting to see the debate in the Committee because the committee deals with economic issues that affect all citizens, and usually when one group of people gained economic benefits, another group would lose them. Senator Soles added that Mona Fitzgerald would take over assisting the committee through the end of the session.

The meeting adjourned at 11:50 a.m.



Senator R. C. Soles, Jr., Chair, Presiding



Dot Waugaman, Committee Assistant

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 773*

Short Title: Protect Military Personnel/Life Insurance.-AB

(Public)

Sponsors: Representatives Martin, Glazier, Dickson, Lucas (Primary Sponsors); Alexander, Brisson, Church, England, Faison, Farmer-Butterfield, Folwell, Grady, Gulley, J. Harrell, Harrison, Holliman, McGee, Pierce, Ross, Tarleton, Underhill, and Wainwright.

Referred to: Homeland Security, Military and Veterans Affairs, if favorable, Judiciary I.

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT MEMBERS OF THE UNITED STATES ARMED FORCES FROM DISHONEST AND PREDATORY LIFE INSURANCE AND ANNUITY SALES PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 6. Dishonest and Predatory Sales to Military Personnel.

"§ 58-58-320. Purpose.

(a) The purpose of this Part is to set forth standards to protect service members of the Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing in this Part shall be construed to create or imply a private cause of action for a violation of this Part.

"§ 58-58-325. Scope.

This Part applies to the solicitation or sale of any life or annuity product by an insurer or insurance producer to a member of the Armed Forces, wherever located.

"§ 58-58-330. Exemptions.

This Part does not apply to solicitations or sales involving:

(1) Credit insurance.

(2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer.

(3) An application to the existing insurer that issued the existing policy or contract when (i) a contractual change or a conversion privilege is being exercised, (ii) the existing policy or contract is being replaced by

the same insurer pursuant to a program filed with and approved by the Commissioner, or (iii) a term conversion privilege is exercised among corporate affiliates.

(4) Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance.

(5) Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).

b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer.

c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

f. Prenarranged funeral contracts.

"§ 58-58-335. Definitions.

As used in this Part:

(1) "Armed Forces" means all components of the United States Army, Navy, Air Force, Marine Corps, and Coast Guard and their reserve components.

(2) "Department of Defense personnel" means any service member and all civilian employees, including nonappropriated fund employees and special government employees, of the United States Department of Defense, or its successor agency.

(3) "Insurance producer" has the same meaning as in G.S. 58-33-10(7).

(4) "Life insurance" means insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income; and unless otherwise specifically excluded, includes annuities.

(5) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(6) "Service member" means any active duty commissioned officer, any active duty warrant officer, or any enlisted member of the Armed Forces.

(7) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy, excluding annuities, by rider, by endorsement, or other mechanism that accumulates premium or deposits at interest, or by other means. "Side fund" does not include accumulated or cash value or secondary guarantees provided by a universal life policy nor does it include cash values provided by a whole life policy that are subject to the standard nonforfeiture law for life insurance.

(8) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair.

The following acts or practices are declared to be false, misleading, deceptive, or unfair:

(1) Possessing, completing, submitting, or processing or assisting in the submission or processing of, any form or device used by the Armed Forces to direct a service member's pay to a third party, including using or assisting in using a service member's "MyPay" account or other similar Internet medium, for the purpose of establishing a direct deposit for the purchase of life insurance.

(2) Establishing any account or fictitious account in the name of an applicant or insured service member at a depository institution for the purpose of receiving funds for the payment of premium or receiving any funds directly or indirectly through the use of Treasury Form 1199A, "Direct Deposit Sign-Up Form", or its equivalent.

(3) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation.

(4) Offering or giving anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.

(5) Participating in or assisting in any Armed Forces sponsored education or orientation program.

(6) Offering or giving anything of value, directly or indirectly, greater than five dollars (\$5.00) in any 12-month period, or in an amount specified by Department of Defense regulations, to any service member who has direct command authority over or direct responsibility for service members with a pay grade of E-1 through E-4.

(7) Offering or giving anything with a value greater than five dollars (\$5.00) to a service member for the service member's attendance at any event involving the solicitation or sale of life insurance.

- (8) Soliciting the purchase of any life insurance product on a military installation randomly or selectively from household to household without prior specific appointment or invitation.
- (9) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
- (10) Making appointments with, or soliciting service members during, their duty hours.
- (11) Making appointments with or soliciting service members on a military installation in barracks, day rooms, unit areas, or transient personnel housing.
- (12) Making any representation, or using any device, that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, recommended by the United States government, the Armed Forces, or any state or federal agency, or any government entity.
- (13) Using any title, descriptive name, or identifier, other than titles that identify the insurance producer as a producer or agent for the insurer. Examples include, "Battalion Insurance Counselor", "Unit Insurance Advisor", "Servicemen's Group Life Insurance Conversion Consultant", or "Veteran's Benefits Counselor".
- (14) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party eleemosynary or charitable organization that promotes the welfare of, or assists members of, the Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that the organization is affiliated, connected, or associated with, or endorsed, sponsored, sanctioned, or recommended by the United States Government or the Armed Forces.
- (15) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.
- (16) Excluding annuities, representing that the life insurance product costs "nothing" or is "free", or otherwise misrepresenting the mortality costs for the product.
- (17) Making any representation regarding the availability, amount, cost, exclusions, or limitations to coverage provided to a service member or dependents by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance that is false, misleading, or deceptive.
- (18) Making any representation about conversion requirements, including the costs of coverage, or exclusions or limitations to coverage, of Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to private insurers that is false, misleading, or deceptive.

- 1 (19) Deploying, using, or contracting for any lead generating materials that
2 do not clearly and conspicuously disclose that the recipient will be
3 contacted by an insurance producer for the purpose of soliciting the
4 purchase of life insurance. For the purposes of this subdivision,
5 "clearly and conspicuously" requires a type size of at least 16 points.
6 (20) Failing to disclose that a solicitation for the sale of life insurance will
7 be made when establishing a specific appointment for a meeting with a
8 prospective purchaser.
9 (21) Excluding annuities, failing to disclose in a clear and conspicuous
10 manner the fact that the product being sold is life insurance, the
11 amount of coverage, and the cost of the coverage.
12 (22) Failing to make, at the time of sale or offer, the written disclosures
13 required by the "Military Personnel Financial Services Protection Act",
14 P.L. 109-290.
15 (23) Failing to provide the applicant at the time a policy is applied for (i) a
16 copy of the application, (ii) a written disclosure that clearly and
17 concisely sets out the coverage provided and the cost of the coverage,
18 and (iii) an explanation of any free-look period with instructions on
19 how to cancel.
20 (24) Excluding annuities, recommending the purchase of any life insurance
21 product that includes a side fund to service members in pay grades E-1
22 through E-4, unless the insurer has reasonable grounds for believing
23 that the life insurance, standing alone, is suitable. Sale of a life
24 insurance product that includes a side fund to a service member in pay
25 grades E-1 through E-4 or their equivalents, who is currently enrolled
26 in Servicemembers' Group Life Insurance, is presumed unsuitable.
27 (25) Excluding annuities, offering for sale or selling any life insurance
28 contract that includes a side fund unless interest credited accrues from
29 the date of deposit to the date of withdrawal and permits withdrawals
30 without limit or penalty.
31 (26) Excluding annuities, offering for sale or selling any life insurance
32 contract that includes a side fund, unless the applicant has been
33 provided with a schedule of effective rates of return based upon cash
34 flows of the combined product. For this disclosure, the effective rate of
35 return will consider all premiums or cash contributions made by the
36 policyholder and all cash accumulations or cash surrender values
37 available to the policyholder in addition to life insurance coverage.
38 (27) Excluding annuities, offering for sale or selling any life insurance
39 contract that includes a side fund that by default diverts or transfers
40 accumulated funds to pay, reduce, or offset any premiums due, unless
41 the applicant, in writing, affirmatively chooses that option.
42 (28) Excluding annuities, offering for sale or selling any life insurance
43 contract that, after considering all policy benefits, including

1 endowment, return of premium, or persistency, does not comply with
2 the standard nonforfeiture law for life insurance.

3 (29) Offering for sale or selling any life insurance product that excludes
4 coverage if the insured's death is related to war, declared or
5 undeclared, or any act related to military service except for accidental
6 death coverage, which may be excluded.

7 (30) Suggesting, recommending, or encouraging a service member to
8 cancel or terminate the service member's Servicemembers' Group Life
9 Insurance policy or issuing a life insurance policy that replaces an
10 existing Servicemembers' Group Life Insurance policy.

11 (31) Accepting an application for life insurance or issuing a policy of life
12 insurance on the life of an enlisted member of the United States Army
13 with the pay grade of E-1, E-2, or E-3 without first obtaining for the
14 Company's files a completed copy of DA Form 2056, "Commercial
15 Insurance Solicitation Record", or its equivalent, which confirms that
16 the applicant has received counseling as required by Army Regulation
17 210-7 or its equivalent.

18 **"§ 58-58-345. Overcoming the presumption of unsuitability.**

19 (a) The presumption of unsuitability regarding the sale of life insurance contracts
20 that include a side fund to service members in pay grades E-1 through E-4 may be
21 overcome if, after the completion of a needs assessment, the insurer demonstrates that
22 the applicant's Servicemembers' Group Life Insurance death benefit, together with any
23 other military survivors benefits, savings, and investments, survivors income, and other
24 life insurance, are insufficient to meet the applicant's insurable needs for life insurance.

25 (b) As used in this section, "insurable needs" are the risks associated with
26 premature death, taking into consideration the financial obligations and immediate and
27 future cash needs of the applicant's estate or survivors, or both.

28 (c) Other military survivor's benefits provided by the federal government that
29 must be included in a service member's needs assessment include the Death Gratuity,
30 Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational
31 Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits,
32 Survivor's Housing Benefits and Allowances, and Federal Income Tax Forgiveness.

33 **"§ 58-58-350. Procedures and sanctions.**

34 (a) The provisions of G.S. 58-63-20, 58-63-25, 58-63-32, 58-63-35, 58-63-50,
35 and 58-63-60 apply to this Part and are incorporated into this Part by reference.

36 (b) A violation of this Part is a ground for license suspension, probation,
37 revocation, nonrenewal, or denial under G.S. 58-33-46 and subjects the violator to
38 G.S. 58-2-70."

39 **SECTION 2.** This act becomes effective October 1, 2007, and applies to acts
40 or offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 773*
PROPOSED SENATE COMMITTEE SUBSTITUTE H773-CSRG-59 [v.1]

7/17/2007 6:21:46 PM

Short Title: Protect Military Personnel/Life Insurance.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT MEMBERS OF THE UNITED STATES ARMED FORCES
FROM DISHONEST AND PREDATORY LIFE INSURANCE AND ANNUITY
SALES PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by
adding a new Part to read:

"Part 6. Dishonest and Predatory Sales to Military Personnel.

"§ 58-58-320. Purpose.

(a) The purpose of this Part is to set forth standards to protect service members of
the Armed Forces from dishonest and predatory insurance sales practices by declaring
certain identified practices to be false, misleading, deceptive, or unfair.

(b) Nothing in this Part shall be construed to create or imply a private cause of
action for a violation of this Part.

"§ 58-58-325. Scope.

This Part applies only to the solicitation or sale of any life insurance or annuity
product by an insurer or insurance producer to an active duty service member of the
United States Armed Forces.

"§ 58-58-330. Exemptions.

(a) This Part does not apply to solicitations or sales involving:

(1) Credit insurance.

(2) Group life insurance or group annuities where there is no in-person,
face-to-face solicitation of individuals by an insurance producer or
where the contract or certificate does not include a side fund.

(3) An application to the existing insurer that issued the existing policy or
contract when (i) a contractual change or a conversion privilege is
being exercised, (ii) the existing policy or contract is being replaced by
the same insurer pursuant to a program filed with and approved by the

Commissioner, or (iii) a term conversion privilege is exercised among corporate affiliates.

(4) Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized by 38 U.S.C. § 1965 et seq.

(5) Individual stand-alone health policies, including disability income policies.

(6) Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and that are not underwritten by an insurer.

(7) Contracts used to fund:

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA).

b. A plan described by sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code, if established or maintained by an employer.

c. A government or church plan defined in section 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code.

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

f. Prearranged funeral contracts.

(b) Nothing in this Part shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(c) For purposes of this Part, general advertisements, direct mail, and Internet marketing do not constitute "solicitation." Telephone marketing does not constitute "solicitation," provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this Part in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

§ 58-58-335. Definitions.

As used in this Part:

(1) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for

1 active duty or full-time training. "Active duty" does not include
2 members of the reserve component who are performing active duty or
3 active duty for training under military calls or orders specifying
4 periods of less than 31 calendar days.

5 (2) "Department of Defense personnel" means all active duty service
6 members and all civilian employees, including nonappropriated fund
7 employees and special government employees, of the Department of
8 Defense.

9 (3) "Door to Door" means a solicitation or sales method whereby an
10 insurance producer proceeds randomly or selectively from household
11 to household without prior specific appointment.

12 (4) "General Advertisement" means an advertisement having as its sole
13 purpose the promotion of the reader's or viewer's interest in the
14 concept of insurance, or the promotion of the insurer or the insurance
15 producer.

16 (5) "Insurance producer" means a person required to be licensed under
17 Article 33 of this Chapter to sell, solicit, or negotiate life insurance,
18 including annuities.

19 (6) "Insurer" means an insurance company required to be licensed under
20 this Chapter to provide life insurance products, including annuities.

21 (7) "Known" or "knowingly" means, depending on its use in this Part, the
22 insurance producer or insurer had actual awareness, or in the exercise
23 of ordinary care should have known, at the time of the act or practice
24 complained of, that the person solicited is or was:

25 a. A service member; or

26 b. A service member with a pay grade of E-4 or below.

27 (8) "Life insurance" means insurance coverage on human lives, including
28 benefits of endowment and annuities, and may include benefits in the
29 event of death or dismemberment by accident and benefits for
30 disability income; and unless otherwise specifically excluded, includes
31 individually issued annuities.

32 (9) "Military installation" means any federally owned, leased, or operated
33 base, reservation, post, camp, building, or other facility to which
34 service members are assigned for duty, including barracks, transient
35 housing, and family quarters.

36 (10) "MyPay" means the Defense Finance and Accounting Service (DFAS)
37 web-based system that enables service members to process certain
38 discretionary pay transactions or provide updates to personal
39 information data elements without using paper forms.

40 (11) "Service member" means any active duty commissioned officer, any
41 active duty warrant officer, or any active duty enlisted member of the
42 Armed Forces.

43 (12) "SGLI" means Servicemembers' Group Life Insurance, as authorized
44 by 38 U.S.C. § 1965 et seq.

(13) "Side fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement, or other mechanism that accumulates premium or deposits with interest or by other means. "Side fund" does not include:

- a. Accumulated value or cash value or secondary guarantees provided by a universal life policy;
- b. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- c. A premium deposit fund that:
 1. Contains only premiums paid in advance that accumulate at interest.
 2. Imposes no penalty for withdrawal.
 3. Does not permit funding beyond future required premiums.
 4. Is not marketed or intended as an investment.
 5. Does not carry a commission, either paid or calculated.

(14) "Specific appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.

(15) "United States Armed Forces" or "Armed Forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(16) "VGLI" means Veterans' Group Life Insurance, as authorized by 38 U.S.C. § 1965 et seq.

"§ 58-58-340. Practices declared false, misleading, deceptive, or unfair on a military installation.

(a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

- (1) Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser.
- (2) Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
- (3) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
- (4) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.
- (5) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.
- (6) Posting unauthorized bulletins, notices, or advertisements.

(7) Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(8) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the Armed Forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives, or rules of the Department of Defense or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(1) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(2) Using an insurance producer to participate in any Armed Forces sponsored education or orientation program.

"§ 58-58-345. Practices declared false, misleading, deceptive, or unfair regardless of location.

(a) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive, or unfair:

(1) Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.

(2) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

a. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 *et seq.* and the regulations promulgated thereunder; and

b. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

- (3) Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in subdivision (a)(2) of this section.
- (4) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.
- (5) Using Department of Defense personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel.
- (6) Offering or giving anything of value, directly or indirectly, to Department of Defense personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.
- (7) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.
- (8) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval, or affiliation and are declared to be false, misleading, deceptive, or unfair:

- (1) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer, or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor." Nothing in this subdivision prohibits a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Those designations include, but are not limited to, Chartered

1 Life Underwriter (CLU), Chartered Financial Consultant (ChFC),
2 Certified Financial Planner (CFP), Master of Science in Financial
3 Services (MSFS), or Masters of Science Financial Planning (MS).

- 4 (2) Soliciting the purchase of any life insurance product through the use of
5 or in conjunction with any third party organization that promotes the
6 welfare of or assists members of the United States Armed Forces in a
7 manner that has the tendency or capacity to confuse or mislead a
8 service member into believing that either the insurer, insurance
9 producer or insurance product is affiliated, connected or associated
10 with, endorsed, sponsored, sanctioned or recommended by the U.S.
11 Government, or the United States Armed Forces.

12 (c) The following acts or practices by an insurer or insurance producer lead to
13 confusion regarding premiums, costs or investment returns and are declared to be false,
14 misleading, deceptive, or unfair:

- 15 (1) Using or describing the credited interest rate on a life insurance policy
16 in a manner that implies that the credited interest rate is a net return on
17 premium paid.
18 (2) Excluding individually issued annuities, misrepresenting the mortality
19 costs of a life insurance product, including stating or implying that the
20 product "costs nothing" or is "free."

21 (d) The following acts or practices by an insurer or insurance producer regarding
22 SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

- 23 (1) Making any representation regarding the availability, suitability,
24 amount, cost, exclusions or limitations to coverage provided to a
25 service member or dependents by SGLI or VGLI that is false,
26 misleading, or deceptive.
27 (2) Making any representation regarding conversion requirements,
28 including the costs of coverage, or exclusions or limitations to
29 coverage of SGLI or VGLI to private insurers that is false, misleading,
30 or deceptive.
31 (3) Suggesting, recommending or encouraging a service member to cancel
32 or terminate his or her SGLI policy or issuing a life insurance policy
33 that replaces an existing SGLI policy unless the replacement shall take
34 effect upon or after the service member's separation from the Armed
35 Forces.

36 (e) The following acts or practices by an insurer and or insurance producer
37 regarding disclosure are declared to be false, misleading, deceptive, or unfair:

- 38 (1) Deploying, using or contracting for any lead generating materials
39 designed exclusively for use with service members that do not clearly
40 and conspicuously disclose that the recipient will be contacted by an
41 insurance producer, if that is the case, for the purpose of soliciting the
42 purchase of life insurance.

- (2) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.
- (3) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.
- (4) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16.
- (5) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:
- a. An explanation of any free look period with instructions on how to cancel if a policy is issued; and
 - b. Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of rules adopted by the Commissioner concerning life insurance illustrations are sufficient to meet this requirement for a written disclosure.
- (f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:
- (1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.
 - (2) Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance. As used in this subdivision, "insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents; and "other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity

1 Compensation, TRICARE Healthcare benefits, Survivor Housing
2 Benefits and Allowances, Federal Income Tax Forgiveness, and Social
3 Security Survivor Benefits.

4 (3) Excluding individually issued annuities, offering for sale or selling any
5 life insurance contract which includes a side fund:

6 a. Unless interest credited accrues from the date of deposit to the
7 date of withdrawal and permits withdrawals without limit or
8 penalty;

9 b. Unless the applicant has been provided with a schedule of
10 effective rates of return based upon cash flows of the combined
11 product. For this disclosure, the effective rate of return will
12 consider all premiums and cash contributions made by the
13 policyholder and all cash accumulations and cash surrender
14 values available to the policyholder in addition to life insurance
15 coverage. This schedule will be provided for at least each policy
16 year from one to 10 and for every fifth policy year thereafter
17 ending at age 100, policy maturity, or final expiration; and

18 c. Which by default diverts or transfers funds accumulated in the
19 side fund to pay, reduce or offset any premiums due.

20 (4) Excluding individually issued annuities, offering for sale or selling any
21 life insurance contract which after considering all policy benefits,
22 including but not limited to endowment, return of premium or
23 persistence, does not comply with standard nonforfeiture law for life
24 insurance.

25 (5) Selling any life insurance product to an individual known to be a
26 service member that excludes coverage if the insured's death is related
27 to war, declared or undeclared, or any act related to military service
28 except for an accidental death coverage, e.g., double indemnity, which
29 may be excluded.

30 **"§ 58-58-350. Procedures and sanctions.**

31 (a) The provisions of G.S. 58-63-20, 58-63-25, 58-63-32, 58-63-35, 58-63-50,
32 and 58-63-60 apply to this Part and are incorporated into this Part by reference.

33 (b) A violation of this Part is a ground for license suspension, probation,
34 revocation, nonrenewal, or denial under G.S. 58-33-46 and subjects the violator to
35 G.S. 58-2-70."

36 **SECTION 2.** This act becomes effective October 1, 2007, and applies to acts
37 or offenses committed on or after that date.



HOUSE BILL 773: Protect Military Personnel/Life Insurance.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 18, 2007
Introduced by:	Reps. Martin, Glazier, Dickson, Lucas	Summary by:	Tim Hovis
Version:	PCS to First Edition H773-CSR-59[v.2]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 773 adds a new Part 6 to Article 58, Insurance, to protect members of the Armed Forces from dishonest and predatory sale and solicitation of life insurance and annuity products. The bill applies to the sale and solicitation of life insurance and annuity products by insurers to active duty members of the Armed Forces and prohibits false, misleading, deceptive or unfair acts as listed in the new Part.*

The bill is model legislation recommended by the National Association of Insurance Commissioners.

[As introduced, this bill was identical to S886, as introduced by Sen. Rand, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

BILL ANALYSIS: House Bill 773 adds a new Part 6 to Article 58, Insurance, to protect members of the Armed Forces from dishonest and predatory sale and solicitation of life insurance and annuity products. The bill applies to the sale and solicitation of life insurance and annuity products by insurers to active duty members of the Armed Forces and prohibits false, misleading, deceptive or unfair acts as listed in the new Part.

The new **G.S. 58-58-340** lists the acts or practices to be declared false, misleading, deceptive, or unfair on a military installation and includes the following:

- Knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment.
- Soliciting service members in a group or "mass" audience or in a "captive" audience where attendance is not voluntary.
- Making appointments with service members during normally scheduled duty hours.
- Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where solicitation is prohibited.
- Soliciting without first obtaining permission from the installation commander.
- Posting unauthorized bulletins, notices, or advertisements.
- Knowingly accepting an application for life insurance or issuing a policy without first obtaining a completed copy of any required form that confirms that the applicant has received counseling for the sale of life insurance established by rules of the Department of Defense or any branch of the Armed Forces.
- Using Department of Defense personnel, directly or indirectly, as a representative in any official or business capacity with or without compensation with respect to the solicitation of life insurance.

House Bill 773

Page 2

- Using an insurance producer to participate in any Armed Forces sponsored education or orientation program.

The new **G.S. 58-58-345** lists those practices declared to be false, misleading, deceptive, or unfair **regardless of location** and includes the following:

- Submitting, processing or assisting in the submission or processing of any allotment form used to direct a service member's pay to a third party for the purchase of life insurance.
- Knowingly receiving funds from a service member for the payment of a premium from a depository institution with which the service member has no formal banking relationship.
- Employing any device or method entering into any agreement whereby funds received from a service member by allotment for the payment of premiums are identified on the member's Leave and Earnings Statement as "savings" or "checking" and where the member has no formal banking relationship.
- Entering into an agreement with a depository institution for the purpose of receiving funds from a member where the institution agrees to accept direct deposits from a member with whom it has no formal banking relationship.
- Using Department personnel as a representative or agent in any official or unofficial capacity with respect to the sale of life insurance to members who are junior in rank or grade, or to their family members.
- Offering or giving anything of value to Department personnel to procure their assistance in the solicitation or sale of life insurance.
- Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where life insurance is being solicited.
- Advising a member with a pay grade of e-4 or below to change his or her withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.
- Making any representation to confuse or mislead a service member into believing the insurer or product is affiliated or connected with or recommended by the U.S. Government or the Armed Forces.
- Soliciting the purchase of life insurance through the use of any third party organization that promotes the welfare or assists members of the Armed Forces in a way to confuse or mislead a service member into believing the insurer or product is affiliated or connected with or recommended by the U.S. Government or the Armed Forces.
- Using a credited interest rate on a policy to imply that the rate is a net return on premiums paid.
- Making false or misleading statements regarding Servicemembers' Group Life Insurance or Veteran's Group Life Insurance.
- Using materials as a lead that do not disclose that the recipient will be contacted for life insurance solicitations.
- Failing to disclose that a solicitation will be made when making an appointment with a prospective purchaser.
- Failing to disclose that a product is life insurance.

House Bill 773

Page 3

- Failing to make at the time of sale or offer required written disclosures required by the Armed Forces.
- Failing to provide, when a sale is conducted face-to-face an explanation of any free look period on how to cancel a policy.
- Failing to provide a copy of the application or a written disclosure clearly setting out the type of insurance, the death benefit applied for, and the expected first year cost.
- Recommending the purchase of any product which includes a side fund to a member with a pay grade of E-4 and below unless the insurer has reasonable grounds for believing that the insurance death benefit alone is suitable.
- Offering a product with a side fund to a member in pay grades E-4 or below and currently enrolled in Servicemembers' Group Life Insurance (SGLI) is presumed unsuitable unless the insurer demonstrated that the SGLI death benefit is together with any other military survivor benefits, savings, income and other life insurance is insufficient.
- Offering for sale any contract which includes a side fund unless credited interest accrues from the date of deposit to withdrawal and permits withdrawal without limit or penalty, the applicant has been provided with a schedule of effective rates of return, and which by default diverts or transfers accumulated in a side fund to pay or offset premiums.
- Selling any life insurance to a member that excludes coverage for war related or service related death, except for accidental death.

The new **G.S. 58-58-330** exempts from the bill solicitation or sales involving various products including (1) credit insurance; (2) group life or annuities where there is no face-to-face solicitation or where no side fund is included; (3) applications to the existing insurer for certain changes to existing policies; (4) contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance; (5) individuals stand-alone health policies; (6) life insurance offered by non-profit military association; and (7) ERISA plans, tax exempt plans, other deferred compensation plans.

EFFECTIVE DATE: House Bill 773 becomes effective October 1, 2007.

H0773e1-SMRG-CSRG-59v2

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, July 19, 2007

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

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

H.B.	514	Increase Length Limits for Transit Buses.
		Draft Number: PCS50750
		Sequential Referral: None
		Recommended Referral: None
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 514*
Corrected Copy 3/27/07

Short Title: Increase Length Limits for Transit Buses. (Public)

Sponsors: Representatives Saunders; Gulley, Killian, and Samuelson.

Referred to: Transportation.

March 7, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW PASSENGER BUSES THAT HAVE AN OVERALL LENGTH
OF SIXTY-ONE FEET TO OPERATE ON PUBLIC STREETS AND
HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 is amended by adding a new subsection to read:
"§ 20-116. Size of vehicles and loads.

...
(l) Nothing in this section shall be construed to prevent the operation of
passenger buses that are owned and operated by units of local government and having
an overall length of 61 feet or less, including buses having two or three axles and
operated either as a single vehicle or a combination of vehicles coupled together, on
public streets or highways. The Department of Transportation may prevent the operation
of buses that are authorized under this subsection if the operation of such buses on a
street or highway presents a hazard to passengers of the buses or to the motoring public.

...."

SECTION 2. This act becomes effective July 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 514*
Corrected Copy 3/27/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H514-CSSU-58 [v.4]

7/12/2007 11:55:51 AM

Short Title: Increase Length Limits for Transit Buses.

(Public)

Sponsors:

Referred to:

March 7, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW PASSENGER BUSES THAT HAVE AN OVERALL LENGTH
OF FORTY-FIVE FEET TO OPERATE ON PUBLIC STREETS AND
HIGHWAYS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 is amended by adding a new subsection to read:

"§ 20-116. Size of vehicles and loads.

...

(l) Nothing in this section shall be construed to prevent the operation of passenger buses that are owned and operated by units of local government, operated as a single vehicle only and having an overall length of 45 feet or less, on public streets or highways. The Department of Transportation may prevent the operation of buses that are authorized under this subsection if the operation of such buses on a street or highway presents a hazard to passengers of the buses or to the motoring public.

...."

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



HOUSE BILL 514: Increase Length Limits for Transit Buses

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 18, 2007
Introduced by:	Rep. Saunders	Summary by:	Wendy Graf Ray
Version:	PCS to Second Edition H514-CSSU-58[v.4]		Committee Counsel

SUMMARY: *The PCS for House Bill 514 would authorize local governments to operate passenger buses owned by the local government and having an overall length of 45 feet or less.*

[As introduced, this bill was identical to S549, as introduced by Sen. Dannelly, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

CURRENT LAW: Current general law limits vehicle length to 40 feet for a single vehicle, and 60 feet for a combination of two units.

BILL ANALYSIS: The PCS for House Bill 514 would authorize the operation of passenger buses owned and operated by a unit of local government that are single vehicles and have an overall length of 45 feet or less.

The PCS would also authorize the Department of Transportation to prevent operation of these longer buses if it presents a hazard.

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

H0514e2-SMSU-CSSU-58v4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

4

HOUSE BILL 73*

Committee Substitute Favorable 4/2/07

Committee Substitute #2 Favorable 6/14/07

Fourth Edition Engrossed 6/18/07

Short Title: Improve State Construction Process.

(Public)

Sponsors:

Referred to:

February 6, 2007

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE CAPITAL FACILITIES PROGRAM BY DIRECTING THE STATE BUILDING COMMISSION TO REVIEW THE PROGRAM AND IMPLEMENT MEASURES TO REDUCE DELAYS AND INCREASE ACCOUNTABILITY AMONG THE PARTIES TO THE DESIGN AND CONSTRUCTION PROCESS, BY INCREASING THE BIDDING AND DESIGNER SELECTION THRESHOLDS FOR STATE CONSTRUCTION CONTRACTS, AND BY DIRECTING THE STATE PERSONNEL OFFICE TO CONDUCT A MARKET STUDY OF ARCHITECT AND ENGINEERING POSITION CLASSIFICATIONS.

Whereas, delays in the completion of State capital improvement projects that occur during designer selection, the construction plan review process, construction, and the construction inspection process can result in millions of dollars in increased construction costs due to inflation; and

Whereas, the State Building Commission was created within the Department of Administration to direct and guide the State's capital facilities development and management program; and

Whereas, the State Building Commission has the responsibility for establishing the criteria for and overseeing designer selection for State facilities, adopting rules, coordinating the plan review, approval, and permit process for State capital improvements, and studying and recommending ways to improve the effectiveness and efficiency of the State's capital facilities development and management program; and

Whereas, greater clarity, coordination, and accountability among the agencies responsible for the examination of plans and specifications for the construction and renovation of State facilities and for the construction inspections of those facilities, the owning agencies/institutions as defined in the State Construction Manual, designers, and

1 contractors could reduce these delays and facilitate the timely completion of such
2 projects resulting in significant dollar savings to the State; and

3 Whereas, the influx of project reviews occasioned by the 2000 Higher
4 Education Bond Act created serious workload and resource issues for the State
5 Construction Office and the Department of Insurance; and

6 Whereas, costly delays in the plan review and inspections process for State
7 construction projects are occurring in part due to the inability of the State to attract
8 qualified architects and engineers to conduct such reviews and inspections, and there are
9 no plans at this time for a State Personnel Office market study of architect and
10 engineering positions; Now, therefore,

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** The State Building Commission shall examine the State capital
13 improvement process and shall establish or modify, as necessary, the guidelines for the
14 selection of designers and the rules governing the design, plan review, and inspection of
15 State building projects. In carrying out its examination and proposing and modifying its
16 guidelines and rules, the Commission shall consult with all of the State departments
17 involved in the capital improvement process, including (i) the agencies responsible for
18 the examination of plans and specifications for the construction and renovation of State
19 facilities and for the supervision and inspection of all work done and materials used in
20 the construction or renovation of State facilities ("review and inspection agencies"), (ii)
21 the owning agencies/institutions as defined in the State Construction Manual ("owning
22 agencies"), (iii) the Board of Governors of The University of North Carolina, and (iv)
23 the State Board of Community Colleges. In carrying out the provisions of this section,
24 the Commission shall:

- 25 (1) Examine the State Construction Manual for opportunities to increase
26 the accountability of all parties to the State capital improvement
27 process.
- 28 (2) Determine whether the review and inspection agencies have
29 sufficiently formalized and documented their review standards and
30 processes.
- 31 (3) Oversee the proper documentation of review standards and processes
32 where necessary.
- 33 (4) Facilitate the establishment of clear expectations for all parties to the
34 process, including the owning agencies, review and inspection
35 agencies, designers, and contractors. The Commission shall work with
36 owning agencies and review and inspection agencies to develop a
37 standard set of time measurements for the design process and the
38 construction process and shall consider the development of other
39 standard measures of performance for all the parties to the design,
40 review, inspection, and construction process.
- 41 (5) Review the State's standard design contract for opportunities to
42 strengthen the accountability of design firms to the owning agencies.
43 In particular, the Commission shall consider the inclusion of a

designer's e-mail address as a requirement of the standard design contract.

SECTION 2. The State Building Commission shall file an interim report on or before April 30, 2008, and a final report on or before December 31, 2008, with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Capital Improvements, the Appropriations Committees of the House of Representatives and Senate, and the Fiscal Research Division of the General Assembly. The report shall cover the activities of the Commission in implementing the provisions of Section 1 of this act and any recommendations to improve the coordination and efficacy of the design, review, inspection, and construction process. The report also shall cover the implementation of the recommendations from the Legislative Study Commission on State Construction Inspections, including:

- (1) Efforts to include owning agencies on all correspondence between review and inspection agencies, designers, and contractors.
- (2) Implementation of new services by review and inspection agencies, including the use of face-to-face meetings.
- (3) The impact of any statutory changes providing State agencies with greater flexibility in design and construction contracts.

SECTION 3. The State Personnel Office shall work with the Department of Administration, the Department of Insurance, and other State agencies employing architects and engineers to perform a market study of architect and engineer salaries and position classifications. The State Personnel Office shall complete the study as soon as possible, but in no event later than six months from the effective date of this section.

SECTION 4. G.S. 143-129(a) reads as rewritten:

"(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

SECTION 5. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. Exemption of certain projects.

(a) State capital improvement projects under the jurisdiction of the State Building ~~Commission~~ Commission, capital improvement projects of The University of North Carolina, and community college capital improvement projects, where the estimated

1 expenditure of public money is less than ~~one hundred thousand dollars (\$100,000)~~, five
2 hundred thousand dollars (\$500,000), are exempt from the provisions of this Article.

3 (b) ~~A capital improvement project of The University of North Carolina under~~
4 ~~G.S. 116-31.11 where the estimated expenditure of public money is less than three~~
5 ~~hundred thousand dollars (\$300,000) is exempt from this Article if all of the following~~
6 ~~apply:~~

7 (1) ~~The architectural, engineering, or surveying services to be rendered are~~
8 ~~under an open-end design agreement.~~

9 (2) ~~The open-end design agreement has been publicly announced.~~

10 (3) ~~The open-end design agreement complies with procedures adopted by~~
11 ~~the University and approved by the State Building Commission under~~
12 ~~G.S. 116-31.11(a)(3).~~

13 (e) ~~A community college capital improvement project where the estimated~~
14 ~~expenditure of public money is less than three hundred thousand dollars (\$300,000) is~~
15 ~~exempt from this Article if all of the following apply:~~

16 (1) ~~The architectural, engineering, or surveying services to be rendered are~~
17 ~~under an open-end design agreement.~~

18 (2) ~~The open-end design agreement has been publicly announced.~~

19 (3) ~~The open-end design agreement complies with procedures adopted by~~
20 ~~the State Board of Community Colleges and approved by the State~~
21 ~~Building Commission."~~

22 **SECTION 6.** Sections 4 and 5 are effective when they become law and
23 apply to projects that are funded on or after July 1, 2007. The remainder of this act is
24 effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 73*
Committee Substitute Favorable 4/2/07
Committee Substitute #2 Favorable 6/14/07
Fourth Edition Engrossed 6/18/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H73-CSRF-55 [v.6]

7/18/2007 5:20:34 PM

Short Title: Improve State Construction Process.

(Public)

Sponsors:

Referred to:

February 6, 2007

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE CAPITAL FACILITIES PROGRAM BY DIRECTING THE STATE BUILDING COMMISSION TO REVIEW THE PROGRAM AND IMPLEMENT MEASURES TO REDUCE DELAYS AND INCREASE ACCOUNTABILITY AMONG THE PARTIES TO THE DESIGN AND CONSTRUCTION PROCESS, BY INCREASING THE BIDDING AND DESIGNER SELECTION THRESHOLDS FOR STATE CONSTRUCTION CONTRACTS, AND BY DIRECTING THE STATE PERSONNEL OFFICE TO CONDUCT A MARKET STUDY OF ARCHITECT AND ENGINEERING POSITION CLASSIFICATIONS.

Whereas, delays in the completion of State capital improvement projects that occur during designer selection, the construction plan review process, construction, and the construction inspection process can result in millions of dollars in increased construction costs due to inflation; and

Whereas, the State Building Commission was created within the Department of Administration to direct and guide the State's capital facilities development and management program; and

Whereas, the State Building Commission has the responsibility for establishing the criteria for and overseeing designer selection for State facilities, adopting rules, coordinating the plan review, approval, and permit process for State capital improvements, and studying and recommending ways to improve the effectiveness and efficiency of the State's capital facilities development and management program; and

Whereas, greater clarity, coordination, and accountability among the agencies responsible for the examination of plans and specifications for the construction and

1 renovation of State facilities and for the construction inspections of those facilities, the
2 owning agencies/institutions as defined in the State Construction Manual, designers, and
3 contractors could reduce these delays and facilitate the timely completion of such
4 projects resulting in significant dollar savings to the State; and

5 Whereas, the influx of project reviews occasioned by the 2000 Higher
6 Education Bond Act created serious workload and resource issues for the State
7 Construction Office and the Department of Insurance; and

8 Whereas, costly delays in the plan review and inspections process for State
9 construction projects are occurring in part due to the inability of the State to attract
10 qualified architects and engineers to conduct such reviews and inspections, and there are
11 no plans at this time for a State Personnel Office market study of architect and
12 engineering positions; Now, therefore,

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** The State Building Commission shall examine the State capital
15 improvement process and shall establish or modify, as necessary, the guidelines for the
16 selection of designers and the rules governing the design, plan review, and inspection of
17 State building projects. In carrying out its examination and proposing and modifying its
18 guidelines and rules, the Commission shall consult with all of the State departments
19 involved in the capital improvement process, including (i) the agencies responsible for
20 the examination of plans and specifications for the construction and renovation of State
21 facilities and for the supervision and inspection of all work done and materials used in
22 the construction or renovation of State facilities ("review and inspection agencies"), (ii)
23 the owning agencies/institutions as defined in the State Construction Manual ("owning
24 agencies"), (iii) the Board of Governors of The University of North Carolina, and (iv)
25 the State Board of Community Colleges. In carrying out the provisions of this section,
26 the Commission shall:

- 27 (1) Examine the State Construction Manual for opportunities to increase
28 the accountability of all parties to the State capital improvement
29 process.
- 30 (2) Determine whether the review and inspection agencies have
31 sufficiently formalized and documented their review standards and
32 processes.
- 33 (3) Oversee the proper documentation of review standards and processes
34 where necessary.
- 35 (4) Facilitate the establishment of clear expectations for all parties to the
36 process, including the owning agencies, review and inspection
37 agencies, designers, and contractors. The Commission shall work with
38 owning agencies and review and inspection agencies to develop a
39 standard set of time measurements for the design process and the
40 construction process and shall consider the development of other
41 standard measures of performance for all the parties to the design,
42 review, inspection, and construction process.
- 43 (5) Review the State's standard design contract for opportunities to
44 strengthen the accountability of design firms to the owning agencies.

1 In particular, the Commission shall consider the inclusion of a
2 designer's e-mail address as a requirement of the standard design
3 contract.

4 **SECTION 2.** The State Building Commission shall file an interim report on
5 or before April 30, 2008, and a final report on or before December 31, 2008, with the
6 Joint Legislative Commission on Governmental Operations, the Joint Legislative
7 Oversight Committee on Capital Improvements, the Appropriations Committees of the
8 House of Representatives and Senate, and the Fiscal Research Division of the General
9 Assembly. The report shall cover the activities of the Commission in implementing the
10 provisions of Section 1 of this act and any recommendations to improve the
11 coordination and efficacy of the design, review, inspection, and construction process.
12 The report also shall cover the implementation of the recommendations from the
13 Legislative Study Commission on State Construction Inspections, including:

- 14 (1) Efforts to include owning agencies on all correspondence between
15 review and inspection agencies, designers, and contractors.
- 16 (2) Implementation of new services by review and inspection agencies,
17 including the use of face-to-face meetings.
- 18 (3) The impact of any statutory changes providing State agencies with
19 greater flexibility in design and construction contracts.

20 **SECTION 3.** The State Personnel Office shall work with the Department of
21 Administration, the Department of Insurance, and other State agencies employing
22 architects and engineers to perform a market study of architect and engineer salaries and
23 position classifications. The State Personnel Office shall complete the study as soon as
24 possible, but in no event later than six months from the effective date of this section.

25 **SECTION 4.** G.S. 143-135.26(2) reads as rewritten:

26 "(2) To adopt rules for coordinating the plan review, approval, and permit
27 process for State capital improvement and community college
28 buildings, as defined in subdivision (4) of this section. The rules shall
29 provide for a specific time frame for plan review and approval and
30 permit issuance by each agency, consistent with applicable laws. The
31 time frames shall be established to provide for expeditious review,
32 approval, and permitting of State capital improvement projects and
33 community college buildings. To further expedite the plan review,
34 approval, and permit process, the State Building Commission shall
35 develop a standard memorandum of understanding to be executed by
36 the funded agency and all reviewing agencies for each State capital
37 improvement project. The memorandum of understanding, at
38 minimum, shall include provisions for establishing:

- 39 (a) The type and frequency of plan reviews.
- 40 (b) The submittal dates for each plan review.
- 41 (c) The estimated plan review time for each review and
42 reviewing agency.
- 43 (d) A schedule of meeting dates."

44 **SECTION 5.** G.S. 143-341(3) reads as rewritten:

(3) Architecture and Engineering:

- a. To examine and approve all plans and specifications for the construction or renovation of:
 1. All State buildings or buildings located on State lands, except those buildings over which a local building code inspection department has and exercises jurisdiction; and
 2. All community college buildings requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129 prior to the awarding of a contract for such work; and to examine and approve all changes in those plans and specifications made after the contract for such work has been awarded.
- a1. To organize and schedule, within three weeks of designer selection and before the design contract is let, a meeting of the stakeholders for each State capital improvement project to discuss plan review requirements and to define the terms of the memorandum of understanding developed by the State Building Commission pursuant to G.S. 143-135.26(2). The stakeholders shall include the funded agency, each State agency having plan review responsibilities for the project, and the selected designer. Notwithstanding the foregoing, the meeting need not be scheduled if the funded agency so requests."
- b. To assist, as necessary, all agencies in the preparation of requests for appropriations for the construction or renovation of all State buildings.
- b1. To certify that a statement of needs pursuant to G.S. 143C-3-3 is feasible. For purposes of this sub-subdivision, "feasible" means that the proposed project is sufficiently defined in overall scope; building program; site development; detailed design, construction, and equipment budgets; and comprehensive project scheduling so as to reasonably ensure that it may be completed with the amount of funds requested. At the discretion of the General Assembly, advanced planning funds may be appropriated in support of this certification. This sub-subdivision shall not apply to requests for appropriations of less than one hundred thousand dollars (\$100,000).
- c. To supervise the letting of all contracts for the design, construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision.
- d. To supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under a.2. of this subdivision;

and no such work may be accepted by the State or by any State agency until it has been approved by the Department.

- e. To require all State agencies to use existing plans and specifications for construction projects, where feasible. Prior to designing a project, State agencies shall consult with the Department of Administration on the availability of appropriate existing plans and specifications and the feasibility of using them for a project.

Except for sub-subdivisions b., b1., and e. of this subdivision, this subdivision does not apply to the design, construction, or renovation of projects by The University of North Carolina pursuant to G.S. 116-31.11."

SECTION 6. G.S. 143-129(a) reads as rewritten:

"(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than ~~three hundred thousand dollars (\$300,000)~~ five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

SECTION 7. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. Exemption of certain projects.

(a) State capital improvement projects under the jurisdiction of the State Building ~~Commission~~ Commission, capital improvement projects of The University of North Carolina, and community college capital improvement projects, where the estimated expenditure of public money is less than ~~one hundred thousand dollars (\$100,000)~~ five hundred thousand dollars (\$500,000), are exempt from the provisions of this Article.

(b) ~~A capital improvement project of The University of North Carolina under G.S. 116-31.11 where the estimated expenditure of public money is less than three hundred thousand dollars (\$300,000) is exempt from this Article if all of the following apply:~~

- (1) ~~The architectural, engineering, or surveying services to be rendered are under an open-end design agreement.~~
- (2) ~~The open-end design agreement has been publicly announced.~~

1 (3) The open-end design agreement complies with procedures adopted by
2 the University and approved by the State Building Commission under
3 G.S. 116-31.11(a)(3).

4 (e) A community college capital improvement project where the estimated
5 expenditure of public money is less than three hundred thousand dollars (\$300,000) is
6 exempt from this Article if all of the following apply:

7 (1) The architectural, engineering, or surveying services to be rendered are
8 under an open-end design agreement.

9 (2) The open-end design agreement has been publicly announced.

10 (3) The open-end design agreement complies with procedures adopted by
11 the State Board of Community Colleges and approved by the State
12 Building Commission."

13 **SECTION 8** Sections 4, 5, 6 and 7 are effective when they become law and
14 apply to projects that are funded on or after July 1, 2007. The remainder of this act is
15 effective when it becomes law.



HOUSE BILL 73: Improve State Construction Process

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 18, 2007
Introduced by:	Reps. Owens, Justice, Michaux	Summary by:	Wendy Graf Ray
Version:	PCS to Fourth Edition H73-CSRF-55[v.6]		Committee Counsel

SUMMARY: *The PCS for House Bill 73 makes changes to the state construction process. The bill is a recommendation of the Legislative Study Committee on State Construction Inspections.*

BILL ANALYSIS: Section 1 of the PCS directs the State Building Commission to examine the State capital improvement process and establish or modify guidelines for the selection of designers and the rules governing the design, plan review, and inspection of State building projects. The Commission shall consult with other State departments involved in the capital improvement process.

Section 2 directs the State Building Commission to file an interim report on or before April 30, 2008 and a final report on or before December 31, 2008 detailing their examination of the process of selection of designers and the rules governing the design, plan review, and inspection of State building projects, as well as any recommendations to improve the coordination and efficacy of the design, review, inspection, and construction process. The report shall also cover any implementations of the recommendations. This report shall be filed with the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Capital Improvements, the Appropriations Committees of the House of Representatives and Senate, and the Fiscal Research Division of the General Assembly.

Section 3 directs the State Personnel Office, Department of Administration, the Department of Insurance, and other State agencies employing architects and engineers to perform a market study of architects and engineer salaries and position classifications. The study should be filed within 6 months of the effective date of the section (effective when bill becomes law).

Section 4 directs the State Building Commission to develop a standard memorandum of understanding setting out, at minimum, the type and frequency of plan reviews, submittal dates, estimated plan review time, and a schedule of meeting dates.

Section 5 requires the Department of Administration to schedule a meeting of all stakeholders to a State capital improvement project after the designer is selected but before the design contract is let to discuss plan review requirements. The meeting would not have to be scheduled if the funded agency so requests.

Section 6 raises the threshold for bidding on construction or repair work from \$300,000 to \$500,000.

Section 7 allows an exemption from Article 3D of Chapter 143 (requirements for procurement of architectural, engineering, and surveying services) for capital improvement projects under the jurisdiction of the Commission, the University of North Carolina, and community colleges, where the

House Bill 73

Page 2

estimated expenditure of public money is less than \$500,000 (previous threshold was \$100,000 for the Commission and \$300,000 for the University of North Carolina and community colleges).

EFFECTIVE DATE: Sections 1, 2, and 3 are effective when they become law. Sections 4, 5, 6, and 7 are effective when they become law and apply to projects that are funded on or after July 1, 2007.

Tim Hovis, counsel to House Ways and Means, substantially contributed to this summary.

H0073e4-SMSU-CSRF-55v6

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

6

HOUSE BILL 265

Committee Substitute Favorable 2/27/07
Committee Substitute #2 Favorable 3/6/07
Committee Substitute #3 Favorable 3/29/07
Committee Substitute #4 Favorable 4/18/07
Sixth Edition Engrossed 5/1/07

Short Title: Establish High-Risk Pool.

(Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 6. North Carolina Health Insurance Risk Pool.

"§ 58-50-175. Definitions.

The following definitions apply to this Part:

- (1) "Administrator" – The Pool Administrator selected by the Executive Director in accordance with this Part.
- (2) "Benefit plan" – The coverage offered by the Pool to eligible individuals.
- (3) "Board" – The Board of Directors of the Pool.
- (4) "Commissioner" – The Commissioner of Insurance of North Carolina or the Commissioner's authorized designee.
- (5) "Covered person" – Any individual resident of this State, excluding dependents, who is eligible to receive medical care benefits from any insurer.
- (6) "Creditable coverage" – The same meaning as defined in G.S. 58-68-30(c)(1).
- (7) "Dependent" – A resident spouse, an unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent or guardian, a child who is over 18 years of age and for whom a person may be obligated

- 1 to pay child support, or a child of any age who is disabled and
2 dependent upon the parent or guardian.
- 3 (8) "Executive Director" – The individual selected by a majority vote of
4 the Board members and hired to serve as the Executive Director of the
5 Pool.
- 6 (9) "Federally defined eligible individual" – The same meaning as the
7 defined term "eligible individual" in G.S. 58-68-60(b).
- 8 (10) "Health insurance coverage" – The same meaning as defined in
9 G.S. 58-68-25(a)(5) but does not include benefits described in
10 G.S. 58-68-25(b).
- 11 (11) "Insurance arrangement" – The plan, program, contract, or other
12 arrangement through which medical care is provided by an employer
13 to its officers or employees but does not include medical care covered
14 through an insurer.
- 15 (12) "Insured" – An individual who is eligible to receive benefits from the
16 Pool.
- 17 (13) "Insurer" – Any entity, other than the Pool, that provides medical care
18 benefits, including excess or stop-loss insurance, that covers medical
19 care or administers medical care on any individual in this State. For the
20 purposes of this Part, insurer includes:
- 21 a. An insurance company;
22 b. A hospital or medical service corporation;
23 c. A health maintenance organization;
24 d. A multiple employer welfare arrangement;
25 e. A third-party administrator or claims processor;
26 f. The State Health Plan; and
27 g. Any other nongovernmental entity providing a health benefit
28 plan subject to State insurance regulation.
- 29 (14) "Medical care" – All of the following:
- 30 a. The diagnosis, cure, mitigation, treatment, or prevention of
31 disease, or amounts paid for the purpose of affecting any
32 structure or function of the body;
- 33 b. Transportation primarily for and essential to medical care
34 referred to in sub-subdivision a. of this subdivision; and
- 35 c. Insurance covering medical care referred to in sub-subdivisions
36 a. and b. of this subdivision.
- 37 (15) "Plan of Operation" – The articles, bylaws, and operating rules and
38 procedures adopted by the Board in accordance with this Part.
- 39 (16) "Pool" – The North Carolina Health Insurance Risk Pool.
- 40 (17) "Provider" – An individual or entity that provides medical care to
41 individuals residing in this State.
- 42 (18) "Resident" – An individual who has legal status in the United States
43 and who:

- a. Has been legally domiciled in this State for a period of at least 30 days, except that for a federally defined eligible individual, there shall not be a 30-day requirement;
 - b. Is legally domiciled in this State on the date of application to the Pool and who is eligible for enrollment in the Pool as a result of the Health Insurance Portability and Accountability Act of 1996; or
 - c. Is legally domiciled in this State on the date of application to the Pool and is eligible for the credit for health insurance costs under Section 35 of the Internal Revenue Code of 1986.
- (19) "Reserve" – The Reserve for the North Carolina Health Insurance Risk Pool.
- (20) "State Health Plan" – The Teachers' and State Employees' Comprehensive Major Medical Plan as set forth in Parts 1, 2, and 3 of Article 3 of Chapter 135 of the General Statutes.
- (21) "Trade Adjustment Assistance Program" (TAA) – Title II of the Trade Act of 2002, P.L. 107-210.

"§ 58-50-180. Risk Pool established; board of directors; plan of operation.

(a) There is hereby created a nonprofit entity to be known as the North Carolina Health Insurance Risk Pool. The Pool shall operate under the supervision and control of the Board.

(b) The Board of the North Carolina Health Insurance Risk Pool shall consist of the Commissioner, who shall serve as an ex officio nonvoting member of the Board, and 11 members appointed as follows:

- (1) One member who represents an insurer, as appointed by the Governor.
- (2) Two members of the general public who are not employed by or affiliated with an insurance company or plan, group hospital, or other health care provider and can reasonably be expected to qualify for coverage in the Pool. Members of the general public include individuals whose only affiliation with health insurance or health care coverage is as a covered member. The two members of the general public shall be appointed by the General Assembly, as follows:
 - a. One member upon the recommendation of the President Pro Tempore of the Senate.
 - b. One member upon the recommendation of the Speaker of the House of Representatives.
- (3) Eight members appointed by the Commissioner, as follows:
 - a. One insurer who sells individual health insurance policies.
 - b. One who represents the insurance industry, as recommended by the insurer who covers the largest number of persons in the State.
 - c. One who is licensed to sell health insurance in this State.

- d. Two who represent the medical provider community, one as recommended by the North Carolina Medical Society and one as recommended by the North Carolina Hospital Association.
- e. One who represents business, as recommended by the North Carolina Citizens for Business and Industry.
- f. One who represents small business, as recommended by the National Federation of Independent Business.
- g. One who is either a health policy researcher or a health economist with experience relating to the operation of high-risk insurance pools.

(c) The initial appointments by the Governor and the General Assembly upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve a term of three years. The initial appointments by the Commissioner under subsubdivisions a., b., and d. of subdivision (b)(3) of this section shall be for a term of two years. The initial appointments by the Commissioner under subsubdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term of one year. All succeeding appointments shall be for terms of three years. Members shall not serve for more than two successive terms.

A Board member's term shall continue until the member's successor is appointed by the original appointing authority. Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur. A Board member may be removed by the appointing authority for cause.

The Board shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. Board members shall receive travel allowances under G.S. 138-6 when traveling to and from meetings of the Board, but shall not receive any subsistence allowance or per diem under G.S. 138-5.

(d) The Board shall submit to the Commissioner a Plan of Operation for the Pool and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the Plan of Operation. The Plan of Operation shall become effective upon approval in writing by the Commissioner consistent with the date on which the coverage under this Part must be made available. If the Board fails to submit a suitable Plan of Operation within 180 days after the appointment of the Board, or at any time thereafter fails to submit suitable amendments to the Plan of Operation, the Commissioner shall adopt temporary rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the Commissioner or superseded by a Plan of Operation submitted by the Board and approved by the Commissioner. The Plan of Operation shall:

- (1) Establish procedures for operation of the Pool.
- (2) Establish procedures for selecting a Pool Administrator in accordance with G.S. 58-50-185.

- 1 (3) Establish procedures to create a fund for administrative expenses,

2 which shall be managed by the Board.
- 3 (4) Establish procedures for the collection, handling, disbursing,

4 accounting, assessing, and auditing of assessments, assets, monies, and

5 claims of the Pool and the Pool Administrator.
- 6 (5) Develop and implement a program to publicize the existence of the

7 Pool, the eligibility requirements, procedures for enrollment, and

8 availability of State premium subsidies and to maintain public

9 awareness of the Pool.
- 10 (6) Establish procedures under which applicants and participants may

11 have grievances reviewed by a grievance committee appointed by the

12 Executive Director in accordance with G.S. 58-50-230.
- 13 (7) Establish procedures for identifying and confirming income levels of

14 applicants for Pool coverage who are eligible to receive a State

15 premium subsidy, if a State premium subsidy is available.
- 16 (8) Provide for other matters as may be necessary and proper for the

17 execution of the Executive Director's powers, duties, and obligations

18 under this Part.
- 19 (e) The Pool shall have the general powers and authority granted under the laws

20 of this State to health insurers and the specific authority to do all of the following:
- 21 (1) Enter into contracts as are necessary or proper to carry out the

22 provisions and purposes of this Part, including the authority, with the

23 approval of the Executive Director in collaboration with the Board, to

24 enter into contracts with similar plans of other states for the joint

25 performance of common administrative functions or with persons or

26 other organizations for the performance of administrative functions.
- 27 (2) Sue or be sued, including taking any legal actions necessary or proper

28 to recover or collect assessments due the Pool.
- 29 (3) Take legal action as necessary to:

30 a. Avoid the payment of improper claims against the Pool or the

31 coverage provided by or through the Plan.

32 b. Recover any amounts erroneously or improperly paid by the

33 Plan.

34 c. Recover any amounts paid by the Pool as a result of mistake of

35 fact or law.

36 d. Recover other amounts due the Pool.
- 37 (4) Establish rates and rate schedules in accordance with this Part.
- 38 (5) Issue policies of insurance in accordance with the requirements of this

39 Part.
- 40 (6) Appoint appropriate legal, actuarial, and other committees as

41 necessary to provide technical assistance in the operation of the Pool,

42 policy, and other contract design, and any other function within the

43 Pool's authority.

- (7) Establish policies, conditions, and procedures for reinsuring risks of participating health insurers, as defined in G.S. 58-68-25(a), desiring to issue Pool coverage in their own name. Provision of reinsurance shall not subject the Pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers.
 - (8) Employ and fix the compensation of employees.
 - (9) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public.
 - (10) Provide for reinsurance for the Pool.
 - (11) Issue additional types of health insurance policies to provide optional coverage, including Medicare supplemental insurance coverage.
 - (12) Provide for and employ cost containment measures and requirements including preadmission screening, second surgical opinion, concurrent utilization review, disease management, individual case management, and other commonly used benefit plan design features for the purpose of making health insurance coverage offered by the Pool more cost-effective.
 - (13) Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
 - (14) Adopt bylaws, policies, and procedures as may be necessary or convenient for the implementation of this Part and the operation of the Pool.
 - (15) Assess all insurers in accordance with G.S. 58-50-220.
- (f) The Executive Director, with the approval of the Board, shall operate the Pool in a manner so that the estimated cost of providing the benefit plans offered during any calendar year is not anticipated to exceed the total income the Pool expects to receive from policy premiums and other revenue available to the Pool. The Board may impose a cap on enrollment or may suspend enrollment for an indefinite period if the Board finds that estimated costs are anticipated to exceed income, except that any enrollment cap or suspension shall not apply to federally defined eligible individuals who are eligible to enroll in the Pool pursuant to G.S. 58-50-195(a)(5).
- (g) The Executive Director shall make an annual report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Commissioner, the Joint Legislative Health Care Oversight Committee, and the Committee on Employee Hospital and Medical Benefits. The report shall summarize the activities of the Pool in the preceding calendar year, including the net written and earned premiums, benefit plan enrollment, the expense of administration, and the paid and incurred losses.
- (h) Neither the Board nor the employees of the Pool are liable for any obligations of the Pool. There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Pool or its agents or employees, the Board, the Executive Director, or the Commissioner or the Commissioner's representatives for any action

1 taken by them in good faith in the performance of their powers and duties under this
2 Part.

3 (i) The members of the Board are public servants under G.S. 138A-3(30) and are
4 subject to the provisions of Chapter 138A of the General Statutes.

5 **"§ 58-50-185. Administrator.**

6 (a) The Executive Director, in collaboration with the Board, shall select through
7 a competitive bidding process one or more insurers to administer the Pool. The
8 Executive Director shall evaluate bids submitted based on criteria established by the
9 Board. The criteria shall allow for the comparison of information about each bidding
10 administrator and selection of a Pool Administrator based on at least the following:

11 (1) Proven ability to handle health insurance coverage to individuals.

12 (2) Efficiency and timeliness of the claim processing procedures.

13 (3) Estimated total charges for administering the Pool.

14 (4) Ability to apply effective cost containment programs and procedures
15 and to administer the Pool in a cost-efficient manner.

16 (5) Financial condition and stability.

17 (6) Evidence of authority to provide third-party administrative services in
18 North Carolina.

19 (b) The Administrator shall serve for a period specified in the contract between
20 the Pool and the Administrator subject to removal for cause and subject to any terms,
21 conditions, and limitations of the contract between the Pool and the Administrator. At
22 least one year before the expiration of each period of service by an Administrator, the
23 Executive Director shall invite eligible entities, including the current Administrator,
24 unless the current Administrator was removed for cause, to submit bids to serve as the
25 Administrator. Selection of the Administrator for the succeeding period shall be made at
26 least six months before the end of the current period.

27 (c) The Administrator shall perform such functions relating to the Pool as may be
28 assigned to it, including:

29 (1) Verification of eligibility.

30 (2) Payment of claims.

31 (3) Establishment of a premium billing procedure for collection of
32 premiums from individuals covered under the Pool.

33 (4) Other necessary functions to assure timely payment of benefits to
34 covered persons under the Pool.

35 (d) The Administrator shall submit regular reports to the Executive Director and
36 the Board regarding the operation of the Pool. The contract between the Pool and the
37 Administrator shall specify the frequency, content, and form of the report.

38 (e) Following the close of each calendar year, the Administrator shall determine
39 net written and earned premiums, the expense of administration, and the paid and
40 incurred losses for the year and report this information to the Executive Director and the
41 Board on a form prescribed by the Executive Director.

42 (f) The Administrator shall be paid as provided in the contract between the Pool
43 and the Administrator.

44 **"§ 58-50-190. Risk Pool rates and policy forms.**

1 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
2 adjustments, expense allowances, agent referral fees, claim reserve formulas, and any
3 other actuarial function appropriate to the operation of the Pool. Rates and rate
4 schedules may be adjusted for appropriate factors such as age, sex, and geographic
5 variation in claim cost and shall take into consideration appropriate rating factors in
6 accordance with established actuarial and underwriting practices.

7 (b) The Pool shall determine the standard risk rate by considering the premium
8 rates charged by other insurers offering health insurance coverage to individuals. The
9 standard risk rate shall be established using reasonable actuarial techniques and shall
10 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
11 hundred seventy-five percent (175%) of rates established as applicable for individual
12 standard rates and shall be adjusted annually, at the time of annual renewal.

13 (c) The Executive Director, with the approval of the Board and the
14 Commissioner, shall have the authority to develop incentive programs with premium
15 discounts. The Pool may provide for premium surcharges for covered individuals who
16 are smokers. Premium surcharge rates shall be established by the Executive Director, in
17 collaboration with the Board, subject to the approval of the Commissioner.

18 (d) Provider reimbursement rates under Pool coverage shall be limited to the
19 rates allowed for providers under the Medicare Program for those services covered by
20 Medicare. The Board shall establish reimbursement rates for services for which
21 Medicare has not established an allowed rate. Providers rendering medical care to an
22 insured shall accept payment of the amount established under this subsection, including
23 any applicable deductible, coinsurance, or co-payment amounts, as payment in full for
24 services rendered.

25 (e) The Pool shall submit all premium rates and premium rate schedules and
26 amendments to the Commissioner for approval. The Pool shall not use any premium
27 rates, premium rate schedules or amendments to the rates and schedules unless the
28 Commissioner has approved them. The Commissioner, in evaluating the premium rates
29 and premium rate schedules, shall consider the factors provided in this section. The Pool
30 shall provide all individuals enrolled in the Pool with at least 45 days' notice of any
31 change in Pool premium rates or premium rate schedules.

32 (f) The Pool shall submit all policy forms, riders, endorsements, and applications
33 for coverage to the Commissioner for approval. The Pool shall not use any policy forms,
34 riders, endorsements, or applications for coverages unless the Commissioner has
35 approved them. Except for any provisions that are specifically treated otherwise under
36 this Part, the provisions of this Chapter that apply to benefit plans and policy forms of
37 health insurers generally shall apply to the benefit plans offered and policy forms used
38 by the Pool.

39 **"§ 58-50-195. Eligibility for Pool coverage.**

40 (a) Any individual who is and continues to be a resident of this State is eligible
41 for Pool coverage if the individual provides evidence of any of the following:

- 42 (1) A notice of rejection or refusal to issue substantially similar health
43 insurance coverage for health reasons by an insurer. A rejection or
44 refusal by an insurer offering only stop-loss, excess loss, or

1 reinsurance coverage with respect to the applicant is not sufficient
2 evidence of eligibility.

3 (2) An offer to issue health insurance coverage only with a conditional
4 rider that limits coverage for the individual's high-risk medical
5 condition.

6 (3) A refusal by an insurer to issue health insurance coverage except at a
7 rate exceeding the Pool rate.

8 (4) A diagnosis of the individual with one of the medical or health
9 conditions listed by the Board in accordance with this section. An
10 individual diagnosed with one or more of these conditions is eligible
11 for Pool coverage without applying for other health insurance
12 coverage.

13 (5) Qualification as a federally defined eligible individual, whether or not
14 currently covered by an insurer under that qualification.

15 (6) An individual who is legally domiciled in this State and is eligible for
16 the credit for health insurance costs under the Trade Adjustment
17 Assistance Reform Act of 2002, section 35 of the Internal Revenue
18 Code of 1986. Each dependent of an individual who is eligible for Pool
19 coverage under this subdivision shall also be eligible for Pool
20 coverage.

21 (7) The individual has current individual health insurance coverage at a
22 rate exceeding the Pool rate.

23 (b) The Board, upon recommendation of the Executive Director, shall adopt a list
24 of medical or health conditions for which a person shall be eligible for Pool coverage
25 under subdivision (a)(4) of this section. The Board may amend the list as the Board
26 considers appropriate.

27 (c) An individual is not eligible for coverage under the Pool if:

28 (1) The individual has or obtains medical care benefits substantially
29 similar to or more comprehensive than the benefit plan offered by the
30 Pool, or would be eligible to have coverage if the person elected to
31 obtain it, except that:

32 a. An individual may maintain other coverage for the period of
33 time the individual is satisfying any preexisting condition
34 waiting period under a Pool policy; and

35 b. An individual may maintain Pool coverage for the period of
36 time the individual is satisfying a preexisting condition waiting
37 period under another health insurance policy intended to replace
38 the Pool policy.

39 (2) The individual is determined to be eligible for enrollment in the State
40 Medical Assistance Plan.

41 (3) The individual has previously terminated Pool coverage unless 12
42 months have lapsed since the termination, except that this subdivision
43 shall not apply with respect to an applicant who is a federally defined

1 eligible individual or to an applicant eligible for or receiving benefits
2 under the Trade Adjustment Assistance Program.

3 (4) The individual is an inmate or resident of a public institution, except
4 that this subdivision shall not apply with respect to an applicant who is
5 a federally defined eligible individual.

6 (5) The individual's premiums are paid for or reimbursed under any
7 government-sponsored program or by any government agency or
8 health care provider, except as an otherwise qualifying full-time
9 employee, or dependent thereof, of a government agency or health care
10 provider. This subdivision shall not apply for individuals receiving
11 benefits under the Trade Adjustment Assistance Program or to
12 individuals receiving premium subsidies made available by the State
13 based on individual income levels.

14 (6) The individual has in effect on the date Pool coverage takes effect
15 health insurance coverage from an insurer or insurance arrangement.

16 (d) Coverage under the Pool shall cease:

17 (1) On the date an individual is no longer a resident of this State.

18 (2) On the date an individual requests coverage to end.

19 (3) Upon the death of the covered individual.

20 (4) On the date State law requires cancellation of the Pool policy.

21 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
22 concerning the individual's eligibility or residence to which the
23 individual does not reply.

24 (6) Because the individual has failed to make the payments required under
25 this Part.

26 (e) Except as provided in subsection (d) of this section, an individual who ceases
27 to meet the eligibility requirements of this section may be terminated at the end of the
28 Pool policy period for which the necessary premiums have been paid.

29 **"§ 58-50-200. Unfair referral to Pool.**

30 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of
31 the General Statutes for an employer, an insurer, an insurance producer, as defined in
32 G.S. 58-33-10(7), or a third-party administrator to refer an individual employee to the
33 Pool or arrange for an individual employee to apply to the Pool for the purpose of
34 separating that employee from a group medical care benefit plan provided in connection
35 with the employee's employment. This section shall not prohibit an insurer or insurance
36 producer from informing an individual of other coverage options, including coverage
37 provided by the Pool.

38 **"§ 58-50-205. Minimum Pool benefits.**

39 (a) The Pool shall offer at least two types of benefit plans for individuals eligible
40 under G.S. 58-50-195, including preferred provider organizations with different levels
41 of deductibles and cost-sharing, and at least one choice of a health savings account. The
42 covered services and benefit levels may vary between the types of benefit plans, but at
43 least two types of benefit plans must, at a minimum, cover the benefits and services
44 outlined in the National Association of Insurance Commissioners' (NAIC) Model

1 Health Pool for Uninsurable Individuals Act and be consistent with comprehensive
2 coverage generally available to persons who are eligible for individual health insurance
3 other than Medicare. All benefit plans offered by the Pool shall include disease or case
4 management services.

5 (b) The Board, upon the recommendation of the Executive Director shall adopt
6 rules regarding the lifetime limits and per individual combined coinsurance and
7 deductibles for the health insurance products offered by the Pool. The initial rules shall
8 include not less than one million dollars (\$1,000,000) lifetime limit and a combined
9 annual limit of up to five thousand dollars (\$5,000) per individual on coinsurance and
10 deductibles. The Board, upon recommendation of the Executive Director, shall adopt
11 rules adjusting these limitations at least once every five years to reflect changes in the
12 medical component of the Consumer Price Index.

13 **"§ 58-50-210. Preexisting conditions.**

14 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
15 expenses incurred during the first 12 months following the effective date of coverage as
16 to any condition for which medical advice, care, or treatment was recommended or
17 received as to such conditions during the 12-month period immediately preceding the
18 effective date of coverage, except that no preexisting condition exclusion shall be
19 applied to a federally defined eligible individual.

20 (b) Subject to subsection (a) of this section, the preexisting condition exclusions
21 shall be waived to the extent that similar exclusions, if any, have been satisfied under
22 any prior health insurance coverage that was involuntarily terminated, provided that:

23 (1) Application for Pool coverage is made not later than 63 days following
24 the involuntary termination, and in such case coverage in the Pool
25 shall be effective from the date on which the prior coverage was
26 terminated; and

27 (2) The applicant is not eligible for continuation or conversion rights that
28 would provide coverage substantially similar to Pool coverage.

29 **"§ 58-50-215. Nonduplication of benefits.**

30 (a) The Pool shall be payor of last resort of benefits whenever any other benefit
31 or source of third-party payment is available. Benefits otherwise payable under
32 coverage shall be reduced by all amounts paid or payable through any other medical
33 care benefits and by all hospital and medical expenses paid or payable under any
34 workers' compensation coverage notwithstanding any provision of law to the contrary,
35 automobile medical payment, or liability insurance, whether provided on the basis of
36 fault or no-fault, and by any hospital or medical benefits paid or payable under or
37 provided pursuant to any State or federal law or program.

38 (b) The Pool shall have a cause of action against an eligible person for the
39 recovery of the amount of benefits paid that are not for covered expenses. Benefits due
40 from the Pool may be reduced or refused as a setoff against any amount recoverable
41 under this subsection.

42 **"§ 58-50-220. Assessments.**

43 (a) For the purposes of providing the funds necessary to carry out the powers and
44 duties of the Pool, and except as provided in subsection (c) of this section, the Pool shall

1 assess all insurers at such time and for such amounts as the Board finds necessary to
2 ensure effective and efficient operation of the Pool. Assessments shall be due in not less
3 than 30 days after prior written notice to the insurers and shall accrue interest at twelve
4 percent (12%) per annum on and after the due date.

5 (b) Except with respect to special assessments authorized under this section, and
6 except as otherwise provided in subsection (c) of this section, the Pool shall assess each
7 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured or
8 reinsured or for whom medical care benefits are administered by each insurer per
9 month. The assessment shall be based on actual or expected losses, actuarially
10 appropriate reserves, and administrative expenses in excess of expected or collected
11 premiums and federal loss reimbursements, if any, received by the Pool.

12 In addition to the assessment, the Pool may impose on each insurer a special
13 assessment only when enrollment in the Pool has been capped or suspended. A special
14 assessment may be made to cover only the additional losses of the Pool that are
15 expected to result from the continued entry into the Pool by federally defined eligible
16 individuals during the time that enrollment is closed to all other individuals eligible
17 under G.S. 58-50-195. The special assessment shall be based on actual or expected
18 losses, actuarially appropriate reserves, and administrative expenses in excess of
19 expected and collected premiums for the federally defined eligible individuals who
20 enrolled or are expected to enroll while the suspension of enrollment is in effect.

21 (c) Except with respect to special assessments authorized under this section, the
22 Pool shall assess each insurer an amount not to exceed the following limitations for each
23 covered individual insured, reinsured, or for whom medical care benefits are
24 administered, per month:

25 (1) Seventy cents (70¢) for the 2008 and 2009 calendar years.

26 (2) One dollar (\$1.00) for the 2010 calendar year.

27 (3) One dollar and thirty cents (\$1.30) for the 2011 calendar year.

28 (4) One dollar and seventy cents (\$1.70) for the 2012 calendar year.

29 (5) Two dollars (\$2.00) for the 2013 calendar year and all years thereafter.

30 (d) The Pool shall make reasonable efforts designed to ensure that each covered
31 individual is counted only once with respect to any assessment. For that purpose, the
32 Pool shall require each insurer to include in its count of covered individuals all
33 individuals whose coverage it insures (including by way of excess or stop-loss
34 coverage) in whole or in part and regardless of any reinsurance on those lives that it
35 may obtain, except that lives covered under the Pool and reinsured or administered by a
36 third-party administrator shall not be included in the count. The Pool shall allow a
37 reinsurer to exclude from its number of covered individuals those individuals who have
38 been counted by the primary insurer or by the primary reinsurer or primary excess or
39 stop-loss insurer for the purposes of determining its assessment under this section.

40 (e) The Pool may verify each insurer's assessment based on annual statements
41 and other reports deemed to be necessary by the Pool. The Pool may use any reasonable
42 method of estimating the number of covered individuals of an insurer if the specific
43 number is unknown.

1 (f) If assessments and other receipts by the Pool exceed the actual losses and
2 administrative expenses of the Pool, the excess shall be held at interest and used by the
3 Pool to offset future losses or to reduce Pool premiums. Future losses include reserves
4 for claims incurred but not reported.

5 (g) The Commissioner may suspend or revoke, after notice and hearing, the
6 license of any insurer that fails to pay an assessment. As an alternative, the
7 Commissioner may levy a forfeiture on any insurer that fails to pay an assessment when
8 due. The forfeiture may not exceed five percent (5%) of the unpaid assessment per
9 month, but no forfeiture shall be less than one hundred dollars (\$100.00) per month.

10 **"§ 58-50-225. Reserve created.**

11 (a) There is hereby established a reserve, to be known as the Reserve for the
12 North Carolina Health Insurance Risk Pool.

13 All premiums, fees, charges, rebates, refunds, or any other receipts including, but not
14 limited to, earnings on investments, occurring or arising in connection with the Pool, as
15 established by this Article, shall be deposited into the Reserve. Disbursements from the
16 Reserve shall include any and all amounts required to pay the claims, benefits, and
17 administrative costs as may be determined by the Executive Director and the Board.

18 The Reserve shall be deposited with the State Treasurer and invested as provided in
19 G.S. 147-69.2 and G.S. 147-69.3.

20 (b) Disbursement from the Reserve may be made by warrant drawn on the State
21 Treasurer by the Executive Director, or the Executive Director and the Board may by
22 contract authorize the Administrator to draw the warrant.

23 **"§ 58-50-230. Complaint procedures.**

24 An applicant or participant in coverage from the Pool is entitled to have complaints
25 against the Pool reviewed by a grievance committee appointed by the Executive
26 Director. Members of the Board shall not serve on the grievance committee. The
27 grievance process shall comply with G.S. 58-50-62. The grievance committee shall
28 report to the Board after completion of the review of each complaint. The Executive
29 Director shall retain all written complaints regarding the Pool at least until the third
30 anniversary of the date the Pool received the complaint. Independent review of an
31 appeal decision upholding a noncertification or a second-level grievance review
32 decision upholding a noncertification shall be subject to review pursuant to Part 4 of this
33 Article.

34 **"§ 58-50-235. Audit.**

35 An audit of the Pool shall be conducted annually under the oversight of the State
36 Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Reserve
37 for the North Carolina Health Insurance Risk Pool.

38 **"§ 58-50-240. Taxation.**

39 The Pool established under this Part is exempt from any and all State taxes.

40 **"§ 58-50-245. Rules.**

41 The Board and the Commissioner may adopt rules pursuant to Chapter 150B of the
42 General Statutes, including temporary rules, to implement this Part.

43 **"§ 58-50-250. Collective action.**

1 The establishment of rates, forms, or procedures, and any other joint or collective
2 action required by this Part may not be the basis of any legal action or criminal or civil
3 liability or penalty against the Pool or any insurer.

4 **"§ 58-50-255. Pool financing; Board reporting.**

5 (a) The Board shall monitor methods of financing the Pool to ensure a stable
6 funding source and allow for its continued operation. This monitoring shall include
7 supplementary sources of funding, such as funds obtained from public and private
8 not-for-profit foundations, or other appropriate and available State or non-State funds.
9 The Board shall also review on a regular basis:

- 10 (1) The number of individuals in this State who are uninsured as of a date
11 certain because of high-risk conditions.
- 12 (2) The number of uninsured individuals who would qualify for coverage
13 under the Pool based on G.S. 58-50-195 and its Plan of Operation.
- 14 (3) The cost of coverage under each of the health insurance plans
15 developed by the Board, including administrative costs.
- 16 (4) The extent to which assessments meet or exceed amounts necessary
17 for coverage and Board operations.
- 18 (5) The status of a request by the State to the Centers for Medicare and
19 Medicaid Services for approval of the North Carolina Health Insurance
20 Risk Pool to be considered an acceptable "alternative mechanism"
21 under the federal Health Insurance Portability and Accountability Act
22 in accordance with 45 C.F.R. § 148.128(e).
- 23 (6) Methods for providing a premium subsidy on a sliding scale basis for
24 individuals with incomes up to three hundred percent (300%) of the
25 federal poverty guidelines.

26 (b) The Board shall report its findings and recommendations to the General
27 Assembly on March 1, 2008, and annually thereafter."

28 **§§ 58-50-260 through 265: Reserved for future codification purposes.**

29 **SECTION 1.2.** Effective January 1, 2014, G.S. 58-50-220(c) as enacted in
30 Section 1.1 of this act is repealed.

31 **SECTION 1.3.** Effective January 1, 2014, G.S. 58-50-220(b) as enacted in
32 Section 1.1 of this act reads as rewritten:

33 "(b) Except with respect to special assessments authorized under this section, and
34 except as otherwise provided in subsection (c) of this section, the Pool shall assess each
35 insurer in an amount not to exceed two dollars (\$2.00) per covered individual insured or
36 reinsured or for whom medical care benefits are administered by each insurer per
37 month. The assessment shall be based on actual or expected losses, actuarially
38 appropriate reserves, and administrative expenses in excess of expected or collected
39 premiums and federal loss reimbursements, if any, received by the Pool.

40 In addition to the assessment, the Pool may impose on each insurer a special
41 assessment only when enrollment in the Pool has been capped or suspended. A special
42 assessment may be made to cover only the additional losses of the Pool that are
43 expected to result from the continued entry into the Pool by federally defined eligible
44 individuals during the time that enrollment is closed to all other individuals eligible

1 under G.S. 58-50-195. The special assessment shall be based on actual or expected
2 losses, actuarially appropriate reserves, and administrative expenses in excess of
3 expected and collected premiums for the federally defined eligible individuals who
4 enrolled or are expected to enroll while the suspension of enrollment is in effect."

5 **SECTION 1.4.** On or before January 1, 2008, the Executive Director shall
6 notify the Centers for Medicare and Medicaid Services that the State has established the
7 North Carolina Health Insurance Risk Pool and shall request that the North Carolina
8 Health Insurance Risk Pool be approved as an acceptable "alternative mechanism"
9 under the federal Health Insurance Portability and Accountability Act in accordance
10 with 45 C.F.R. § 148.128(e). The Executive Director shall notify the Commissioner
11 when the Centers for Medicare and Medicaid Services approve the request.

12 **SECTION 1.5.** The Executive Director shall study methods for encouraging
13 healthy behaviors among the Pool's insureds and report the Executive Director's
14 findings to the Board and to the General Assembly not later than one year after initial
15 implementation of the Pool.

16 **SECTION 1.6.** Notwithstanding G.S. 58-50-210(a), individuals enrolling in
17 the Pool within six months of the date that enrollment into the Pool first begins shall be
18 subject to a six-month preexisting condition waiting period.

19 **SECTION 1.7.** G.S. 120-70.111(a) reads as rewritten:

20 "(a) The Joint Legislative Health Care Oversight Committee shall review, on a
21 continuing basis, the provision of health care and health care coverage to the citizens of
22 this State, in order to make ongoing recommendations to the General Assembly on ways
23 to improve health care for North Carolinians. To this end, the Committee shall study the
24 delivery, availability, and cost of health care in North Carolina. The Committee shall
25 also review, on a continuing basis, the implementation of the State Health Insurance
26 Program for Children established under Part 8 of Article 2 of Chapter 108A of the
27 General Statutes. As part of its review, the Committee shall advise and consult with the
28 Department of Health and Human Services as provided under G.S. 108A-70.21. The
29 Committee shall review, on a continuing basis, the implementation of the North
30 Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter
31 58 of the General Statutes. As part of its review, the Committee shall advise and consult
32 with the Executive Director of the North Carolina Health Insurance Risk Pool as
33 provided under G.S. 58-50-180. The Committee may also study other matters related to
34 health care and health care coverage in this State."

35 **SECTION 2.1.** In addition to the Reserve for the North Carolina Health
36 Insurance Risk Pool established under G.S. 58-50-225, as enacted in this act, there is
37 established in the Department of Insurance two separate funds, as follows:

- 38 (1) The Start-up Reserve – State Funds. State funds appropriated to this
39 Fund shall be used to support reasonable expenses for personnel to
40 carry out the Board's responsibilities under the Pool, including
41 contracting a third-party administrator. Funds shall be allocated from
42 this Fund contingent upon the successful application to and award of
43 federal funds for the purposes of this section. Funds shall be allocated
44 by the Commissioner of Insurance for the reasonable expenses of the

1 Board in conducting its duties under this Article that are incurred on or
2 before July 1, 2009. At the end of the fiscal year, any interest or
3 investment income earned on these funds shall be transferred to the
4 General Fund.

- 5 (2) The Start-up Reserve – Federal Funds. Federal funds received in lump
6 sum or as a draw-down grant for the purposes of this Article shall be
7 deposited to this Reserve. The Commissioner of Insurance shall, at the
8 end of the fiscal year in which federal funds have been received,
9 transfer from this Reserve to the General Fund an amount not to
10 exceed the amount of State appropriations made for these purposes
11 from the Start-up Reserve – State Funds.

12 **SECTION 2.2.** It is the intent of the General Assembly that in the event the
13 State is not awarded the federal funds anticipated, the General Fund shall be held
14 harmless.

15 **SECTION 3.** The provisions of this act are severable. If any provision of
16 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
17 other provisions of the act that can be given effect without the invalid provision.

18 **SECTION 4.** This act becomes effective upon appropriation by the General
19 Assembly of funds to the Start-Up Reserve – State Funds established under Section 2.1
20 of this act. Nothing in this act shall require the General Assembly to appropriate any
21 funds to implement this act. Sections 2.1 and 2.2 of this act expire July 1, 2009. In the
22 event this bill becomes law, enrollment in the Pool shall commence no later than
23 January 1, 2009.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 265
Committee Substitute Favorable 2/27/07
Committee Substitute #2 Favorable 3/6/07
Committee Substitute #3 Favorable 3/29/07
Committee Substitute #4 Favorable 4/18/07
Sixth Edition Engrossed 5/1/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H265-PCS80470-LN-45

Short Title: Establish Health Insurance Risk Pool.

(Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL AND TO FUND THE NORTH CAROLINA HEALTH INSURANCE RISK
POOL FROM SAVINGS TO THE GENERAL FUND REALIZED FROM THE
REPEAL OF THE TAX CREDIT FOR SMALL BUSINESS EMPLOYEE
HEALTH BENEFITS AND FROM OTHER SOURCES.

The General Assembly of North Carolina enacts:

SECTION 1.1. Article 50 of Chapter 58 of the General Statutes is amended
by adding a new Part to read:

"Part 6. North Carolina Health Insurance Risk Pool.

"§ 58-50-175. Definitions.

The following definitions apply to this Part:

- (1) "Administrator" – The Pool Administrator selected by the Executive Director in accordance with this Part.
- (2) "Benefit plan" – The coverage offered by the Pool to eligible individuals.
- (3) "Board" – The Board of Directors of the Pool.
- (4) "Commissioner" – The Commissioner of Insurance of North Carolina or the Commissioner's authorized designee.
- (5) "Covered person" – Any individual resident of this State, excluding dependents, who is receiving or is eligible to receive medical care benefits from any insurer.

- (6) "Creditable coverage" – The same meaning as defined in G.S. 58-68-30(c)(1).
- (7) "Dependent" – A resident spouse, an unmarried child under the age of 19 years, a child who is a full-time student under the age of 23 years and who is financially dependent upon the parent or guardian, a child who is over 18 years of age and for whom a person may be obligated to pay child support, or a child of any age who is disabled and dependent upon the parent or guardian.
- (8) "Executive Director" – The individual selected by a majority vote of the Board members and hired to serve as the Executive Director of the Pool.
- (9) "Federally defined eligible individual" – The same meaning as the defined term "eligible individual" in G.S. 58-68-60(b).
- (10) "Health insurance coverage" – The same meaning as defined in G.S. 58-68-25(a)(5) but does not include benefits described in G.S. 58-68-25(b).
- (11) "Insurance arrangement" – The plan, program, contract, or other arrangement through which medical care is provided by an employer to its officers or employees but does not include medical care covered through an insurer.
- (12) "Insured" – An individual who is eligible to receive benefits from the Pool.
- (13) "Insurer" – Any entity, other than the Pool, that provides medical care benefits, including excess or stop-loss insurance, that covers medical care or administers medical care on any individual in this State. For the purposes of this Part, insurer includes:
- a. An insurance company;
 - b. A hospital or medical service corporation;
 - c. A health maintenance organization;
 - d. A multiple employer welfare arrangement;
 - e. A third-party administrator or claims processor; and
 - f. Any other nongovernmental entity providing a health benefit plan subject to State insurance regulation.
- (14) "Medical care" – All of the following:
- a. The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;
 - b. Transportation primarily for and essential to medical care referred to in sub-subdivision a. of this subdivision; and
 - c. Insurance covering medical care referred to in sub-subdivisions a. and b. of this subdivision.
- (15) "Plan of Operation" – The articles, bylaws, and operating rules and procedures adopted by the Board in accordance with this Part.
- (16) "Pool" – The North Carolina Health Insurance Risk Pool.

- 1 (17) "Provider" – An individual or entity that provides medical care to
2 individuals residing in this State.
- 3 (18) "Resident" – An individual who has legal status in the United States
4 and who:
- 5 a. Has been legally domiciled in this State for a period of at least
6 30 days, except that for a federally defined eligible individual,
7 there shall not be a 30-day requirement;
- 8 b. Is legally domiciled in this State on the date of application to
9 the Pool and who is eligible for enrollment in the Pool as a
10 result of the Health Insurance Portability and Accountability
11 Act of 1996; or
- 12 c. Is legally domiciled in this State on the date of application to
13 the Pool and is eligible for the credit for health insurance costs
14 under section 35 of the Internal Revenue Code of 1986.
- 15 (19) "Special Fund." – The North Carolina Health Insurance Risk Pool
16 Special fund.
- 17 (20) "Trade Adjustment Assistance Program" (TAA) – Title II of the Trade
18 Act of 2002, P.L. 107-210.

19 **"§ 58-50-180. Risk Pool established; board of directors; plan of operation.**

20 (a) There is hereby created a nonprofit entity to be known as the North Carolina
21 Health Insurance Risk Pool. The Pool shall operate under the supervision and control of
22 the Board.

23 (b) The Board of the North Carolina Health Insurance Risk Pool shall consist of
24 the Commissioner, who shall serve as an ex officio nonvoting member of the Board, and
25 11 members appointed as follows:

- 26 (1) One member who represents an insurer, as appointed by the Governor.
- 27 (2) Two members of the general public who are not employed by or
28 affiliated with an insurance company or plan, group hospital, or other
29 health care provider and can reasonably be expected to qualify for
30 coverage in the Pool. Members of the general public include
31 individuals whose only affiliation with health insurance or health care
32 coverage is as a covered member. The two members of the general
33 public shall be appointed by the General Assembly, as follows:
- 34 a. One member upon the recommendation of the President Pro
35 Tempore of the Senate.
- 36 b. One member upon the recommendation of the Speaker of the
37 House of Representatives.
- 38 (3) Eight members appointed by the Commissioner, as follows:
- 39 a. One insurer who sells individual health insurance policies.
- 40 b. One who represents the insurance industry, as recommended by
41 the insurer who covers the largest number of persons in the
42 State.
- 43 c. One who is licensed to sell health insurance in this State.

- 1 d. Two who represent the medical provider community, one as
2 recommended by the North Carolina Medical Society, and one
3 as recommended by the North Carolina Hospital Association.
4 e. One who represents business, as recommended by the North
5 Carolina Citizens for Business and Industry.
6 f. One who represents small business, as recommended by the
7 National Federation of Independent Business.
8 g. One who is either a health policy researcher or a health
9 economist with experience relating to the operation of health
10 insurance risk pools.

11 (c) The initial appointments by the Governor and the General Assembly upon the
12 recommendation of the Speaker of the House of Representatives and the President Pro
13 Tempore of the Senate shall serve a term of three years. The initial appointments by the
14 Commissioner under sub-subdivisions a., b., and d. of subdivision (b)(3) of this section
15 shall be for a term of two years. The initial appointments by the Commissioner under
16 sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term
17 of one year. All succeeding appointments shall be for terms of three years. Members
18 shall not serve for more than two successive terms.

19 A Board member's term shall continue until the member's successor is appointed by
20 the original appointing authority. Vacancies shall be filled by the appointing authority
21 for the unexpired portion of the term in which they occur. A Board member may be
22 removed by the appointing authority for cause.

23 The Board shall meet at least quarterly upon the call of the chair. A majority of the
24 total membership of the Commission shall constitute a quorum.

25 The Commissioner shall appoint a chair to serve for the initial two years of the
26 Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board
27 members and shall serve for two-year terms. Board members shall receive travel
28 allowances under G.S. 138-6 when traveling to and from meetings of the Board, but
29 shall not receive any subsistence allowance or per diem under G.S. 138-5.

30 (d) The Board shall submit to the Commissioner a Plan of Operation for the Pool
31 and any amendments necessary or suitable to assure the fair, reasonable, and equitable
32 administration of the Plan of Operation. The Plan of Operation shall become effective
33 upon approval in writing by the Commissioner consistent with the date on which the
34 coverage under this Part must be made available. If the Board fails to submit a suitable
35 Plan of Operation within 180 days after the appointment of the Board, or at any time
36 thereafter fails to submit suitable amendments to the Plan of Operation, the
37 Commissioner shall adopt temporary rules necessary or advisable to effectuate the
38 provisions of this section. The rules shall continue in force until modified by the
39 Commissioner or superseded by a Plan of Operation submitted by the Board and
40 approved by the Commissioner. The Plan of Operation shall:

- 41 (1) Establish procedures for operation of the Pool.
42 (2) Establish procedures for selecting a Pool Administrator in accordance
43 with G.S. 58-50-185.

- 1 (3) Establish procedures to create a fund for administrative expenses,
2 which shall be managed by the Board.
- 3 (4) Establish procedures for the collection, handling, disbursing,
4 accounting, and auditing of assets, monies, and claims of the Pool and
5 the Pool Administrator.
- 6 (5) Develop and implement a program to publicize the existence of the
7 Pool, the eligibility requirements, procedures for enrollment, and
8 availability of State premium subsidies and to maintain public
9 awareness of the Pool.
- 10 (6) Establish procedures under which applicants and participants may
11 have grievances reviewed by a grievance committee appointed by the
12 Executive Director in accordance with G.S. 58-50-230.
- 13 (7) Establish procedures for identifying and confirming income levels of
14 applicants for Pool coverage who are eligible to receive a State
15 premium subsidy, if a State premium subsidy is available.
- 16 (8) Provide for other matters as may be necessary and proper for the
17 execution of the Executive Director's powers, duties, and obligations
18 under this Part.
- 19 (e) The Pool shall have the general powers and authority granted under the laws
20 of this State to health insurers and the specific authority to do all of the following:

 - 21 (1) Enter into contracts as are necessary or proper to carry out the
22 provisions and purposes of this Part, including the authority, with the
23 approval of the Executive Director in collaboration with the Board, to
24 enter into contracts with similar plans of other states for the joint
25 performance of common administrative functions or with persons or
26 other organizations for the performance of administrative functions.
 - 27 (2) Sue or be sued.
 - 28 (3) Take legal action as necessary to:
 - 29 a. Avoid the payment of improper claims against the Pool or the
30 coverage provided by or through the Plan.
 - 31 b. Recover any amounts erroneously or improperly paid by the
32 Plan.
 - 33 c. Recover any amounts paid by the Pool as a result of mistake of
34 fact or law.
 - 35 d. Recover other amounts due the Pool.
 - 36 (4) Establish rates and rate schedules in accordance with this Part.
 - 37 (5) Issue policies of insurance in accordance with the requirements of this
38 Part.
 - 39 (6) Appoint appropriate legal, actuarial, and other committees as
40 necessary to provide technical assistance in the operation of the Pool,
41 policy, and other contract design, and any other function within the
42 Pool's authority.
 - 43 (7) Establish policies, conditions, and procedures for reinsuring risks of
44 participating health insurers, as defined in G.S. 58-68-25(a), desiring

1 to issue Pool coverage in their own name. Provision of reinsurance
2 shall not subject the Pool to any of the capital or surplus requirements,
3 if any, otherwise applicable to reinsurers.

4 (8) Employ and fix the compensation of employees.

5 (9) Prepare and distribute certificate of eligibility forms and enrollment
6 instruction forms to insurance producers and to the general public.

7 (10) Provide for reinsurance for the Pool.

8 (11) Issue additional types of health insurance policies to provide optional
9 coverage, including Medicare supplemental insurance coverage.

10 (12) Provide for and employ cost containment measures and requirements
11 including preadmission screening, second surgical opinion, concurrent
12 utilization review, disease management, individual case management,
13 health and wellness programs including a smoking cessation initiative,
14 and other commonly used benefit plan design features for the purpose
15 of making health insurance coverage offered by the Pool more
16 cost-effective.

17 (13) Design, utilize, contract, or otherwise arrange for the delivery of
18 cost-effective health care services, including establishing or
19 contracting with preferred provider organizations, health maintenance
20 organizations, and other limited network provider arrangements.

21 (14) Adopt bylaws, policies, and procedures as may be necessary or
22 convenient for the implementation of this Part and the operation of the
23 Pool.

24 (f) The Executive Director, with the approval of the Board, shall operate the Pool
25 in a manner so that the estimated cost of providing the benefit plans offered during any
26 calendar year is not anticipated to exceed the total income the Pool expects to receive
27 from policy premiums and other revenue available to the Pool. The Board may impose a
28 cap on enrollment or may suspend enrollment for an indefinite period if the Board finds
29 that estimated costs are anticipated to exceed income, except that any enrollment cap or
30 suspension shall not apply to federally defined eligible individuals who are eligible to
31 enroll in the Pool pursuant to G.S. 58-50-195(a)(5).

32 (g) The Executive Director shall make an annual report to the Speaker of the
33 House of Representatives, the President Pro Tempore of the Senate, the Commissioner,
34 the Joint Legislative Health Care Oversight Committee, and the Committee on
35 Employee Hospital and Medical Benefits. The report shall summarize the activities of
36 the Pool in the preceding calendar year, including the net written and earned premiums,
37 benefit plan enrollment, the expense of administration, and the paid and incurred losses.

38 (h) Neither the Board nor the employees of the Pool are liable for any obligations
39 of the Pool. There shall be no liability on the part of, and no cause of action of any
40 nature shall arise against, the Pool or its agents or employees, the Board, the Executive
41 Director, or the Commissioner or the Commissioner's representatives for any action
42 taken by them in good faith in the performance of their powers and duties under this
43 Part.

1 (i) The members of the Board are public servants under G.S. 138A-3(30) and are
2 subject to the provisions of Chapter 138A of the General Statutes.

3 **"§ 58-50-185. Administrator.**

4 (a) The Executive Director, in collaboration with the Board, shall select through
5 a competitive bidding process one or more insurers to administer the Pool. The
6 Executive Director shall evaluate bids submitted based on criteria established by the
7 Board. The criteria shall allow for the comparison of information about each bidding
8 administrator and selection of a Pool Administrator based on at least the following:

- 9 (1) Proven ability to handle health insurance coverage to individuals.
10 (2) Efficiency and timeliness of the claim processing procedures.
11 (3) Estimated total charges for administering the Pool.
12 (4) Ability to apply effective cost containment programs and procedures
13 and to administer the Pool in a cost-efficient manner.
14 (5) Financial condition and stability.
15 (6) Evidence of authority to provide third-party administrative services in
16 North Carolina.

17 (b) The Administrator shall serve for a period specified in the contract between
18 the Pool and the Administrator subject to removal for cause and subject to any terms,
19 conditions, and limitations of the contract between the Pool and the Administrator. At
20 least one year before the expiration of each period of service by an Administrator, the
21 Executive Director shall invite eligible entities, including the current Administrator,
22 unless the current Administrator was removed for cause, to submit bids to serve as the
23 Administrator. Selection of the Administrator for the succeeding period shall be made at
24 least six months before the end of the current period.

25 (c) The Administrator shall perform such functions relating to the Pool as may be
26 assigned to it, including:

- 27 (1) Verification of eligibility.
28 (2) Payment of claims.
29 (3) Establishment of a premium billing procedure for collection of
30 premiums from individuals covered under the Pool.
31 (4) Other necessary functions to assure timely payment of benefits to
32 covered persons under the Pool.

33 (d) The Administrator shall submit regular reports to the Executive Director and
34 the Board regarding the operation of the Pool. The contract between the Pool and the
35 Administrator shall specify the frequency, content, and form of the report.

36 (e) Following the close of each calendar year, the Administrator shall determine
37 net written and earned premiums, the expense of administration, and the paid and
38 incurred losses for the year and report this information to the Executive Director and the
39 Board on a form prescribed by the Executive Director.

40 (f) The Administrator shall be paid as provided in the contract between the Pool
41 and the Administrator.

42 **"§ 58-50-190. Risk Pool rates and policy forms.**

43 (a) The Pool shall adopt and modify, as appropriate, rates, rate schedules, rate
44 adjustments, expense allowances, agent referral fees, claim reserve formulas, and any

1 other actuarial function appropriate to the operation of the Pool. Rates and rate
2 schedules may be adjusted for appropriate factors such as age, sex, and geographic
3 variation in claim cost and shall take into consideration appropriate rating factors in
4 accordance with established actuarial and underwriting practices.

5 (b) The Pool shall determine the standard risk rate by considering the premium
6 rates charged by other insurers offering health insurance coverage to individuals. The
7 standard risk rate shall be established using reasonable actuarial techniques and shall
8 reflect anticipated experience and expenses for the coverage. Pool rates shall be one
9 hundred fifty percent (150%) to two hundred percent (200%) of rates established as
10 applicable for individual standard rates and shall be adjusted annually, at the time of
11 annual renewal.

12 (c) The Executive Director, with the approval of the Board and the
13 Commissioner, may develop incentive programs with premium discounts. The Pool may
14 provide for premium surcharges for covered individuals who are smokers. Premium
15 surcharge rates shall be established by the Executive Director, in collaboration with the
16 Board, subject to the approval of the Commissioner.

17 (d) Provider reimbursement rates under Pool coverage shall be limited to the
18 rates allowed for providers under the Medicare Program for those services covered by
19 Medicare. The Board shall establish reimbursement rates for services for which
20 Medicare has not established an allowed rate. Providers rendering medical care to an
21 insured shall accept payment of the amount established under this subsection, including
22 any applicable deductible, coinsurance, or co-payment amounts, as payment in full for
23 services rendered.

24 (e) The Pool shall submit all premium rates and premium rate schedules and
25 amendments to the Commissioner for approval. The Pool shall not use any premium
26 rates, premium rate schedules, or amendments to the rates and schedules unless the
27 Commissioner has approved them. The Commissioner, in evaluating the premium rates
28 and premium rate schedules, shall consider the factors provided in this section. The Pool
29 shall provide all individuals enrolled in the Pool with at least 45 days' notice of any
30 change in Pool premium rates or premium rate schedules.

31 (f) The Pool shall submit all policy forms, riders, endorsements, and applications
32 for coverage to the Commissioner for approval. The Pool shall not use any policy forms,
33 riders, endorsements, or applications for coverages unless the Commissioner has
34 approved them. Except for any provisions that are specifically treated otherwise under
35 this Part, the provisions of this Chapter that apply to benefit plans and policy forms of
36 health insurers generally shall apply to the benefit plans offered and policy forms used
37 by the Pool.

38 **"§ 58-50-195. Eligibility for Pool coverage.**

39 (a) Any individual who is and continues to be a resident of this State is eligible
40 for Pool coverage if the individual provides evidence of any of the following:

- 41 (1) A notice of rejection or refusal to issue substantially similar health
42 insurance coverage for health reasons by an insurer. A rejection or
43 refusal by an insurer offering only stop-loss, excess loss, or

1 reinsurance coverage with respect to the applicant is not sufficient
2 evidence of eligibility.

3 (2) An offer to issue health insurance coverage only with a conditional
4 rider that limits coverage for the individual's high-risk medical
5 condition.

6 (3) A refusal by an insurer to issue health insurance coverage except at a
7 rate exceeding the Pool rate.

8 (4) A diagnosis of the individual with one of the medical or health
9 conditions listed by the Board in accordance with this section. An
10 individual diagnosed with one or more of these conditions is eligible
11 for Pool coverage without applying for other health insurance
12 coverage.

13 (5) Qualification as a federally defined eligible individual, whether or not
14 currently covered by an insurer under that qualification.

15 (6) An individual who is legally domiciled in this State and is eligible for
16 the credit for health insurance costs under the Trade Adjustment
17 Assistance Reform Act of 2002, section 35 of the Internal Revenue
18 Code of 1986. Each dependent of an individual who is eligible for Pool
19 coverage under this subdivision shall also be eligible for Pool
20 coverage.

21 (7) The individual has current individual health insurance coverage at a
22 rate exceeding the Pool rate.

23 (b) The Board, upon recommendation of the Executive Director, shall adopt a list
24 of medical or health conditions for which a person shall be eligible for Pool coverage
25 under subdivision (a)(4) of this section. The Board may amend the list as the Board
26 considers appropriate.

27 (c) An individual is not eligible for coverage under the Pool if:

28 (1) The individual has or obtains medical care benefits substantially
29 similar to or more comprehensive than the benefit plan offered by the
30 Pool, or would be eligible to have coverage if the person elected to
31 obtain it, except that:

32 a. An individual may maintain other coverage for the period of
33 time the individual is satisfying any preexisting condition
34 waiting period under a Pool policy; and

35 b. An individual may maintain Pool coverage for the period of
36 time the individual is satisfying a preexisting condition waiting
37 period under another health insurance policy intended to replace
38 the Pool policy.

39 (2) The individual is determined to be eligible for enrollment in the State
40 Medical Assistance Plan.

41 (3) The individual has previously terminated Pool coverage unless 12
42 months have lapsed since the termination, except that this subdivision
43 shall not apply with respect to an applicant who is a federally defined

1 eligible individual or to an applicant eligible for or receiving benefits
2 under the Trade Adjustment Assistance Program.

3 (4) The individual is an inmate or resident of a public institution, except
4 that this subdivision shall not apply with respect to an applicant who is
5 a federally defined eligible individual.

6 (5) The individual's premiums are paid for or reimbursed under any
7 government-sponsored program or by any government agency or
8 health care provider, except as an otherwise qualifying full-time
9 employee, or dependent thereof, of a government agency or health care
10 provider. This subdivision shall not apply for individuals receiving
11 benefits under the Trade Adjustment Assistance Program or to
12 individuals receiving premium subsidies made available by the State
13 based on individual income levels.

14 (6) The individual has in effect on the date Pool coverage takes effect
15 health insurance coverage from an insurer or insurance arrangement.

16 (d) Coverage under the Pool shall cease:

17 (1) On the date an individual is no longer a resident of this State.

18 (2) On the date an individual requests coverage to end.

19 (3) Upon the death of the covered individual.

20 (4) On the date State law requires cancellation of the Pool policy.

21 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
22 concerning the individual's eligibility or residence to which the
23 individual does not reply.

24 (6) Because the individual has failed to make the payments required under
25 this Part.

26 (e) Except as provided in subsection (d) of this section, an individual who ceases
27 to meet the eligibility requirements of this section may be terminated at the end of the
28 Pool policy period for which the necessary premiums have been paid.

29 **"§ 58-50-200. Unfair referral to Pool.**

30 It is an unfair trade practice under Article 63 of this Chapter and under Chapter 75 of
31 the General Statutes for an employer, an insurer, an insurance producer, as defined in
32 G.S. 58-33-10(7), or a third-party administrator to refer an individual employee to the
33 Pool or arrange for an individual employee to apply to the Pool for the purpose of
34 separating that employee from a group medical care benefit plan provided in connection
35 with the employee's employment. This section shall not prohibit an insurer or insurance
36 producer from informing an individual of other coverage options, including coverage
37 provided by the Pool.

38 **"§ 58-50-205. Minimum Pool benefits.**

39 (a) The Pool shall offer at least two types of benefit plans for individuals eligible
40 under G.S. 58-50-195, including preferred provider organizations with different levels
41 of deductibles and cost-sharing, and at least one choice of a health savings account. The
42 covered services and benefit levels may vary between the types of benefit plans, but at
43 least two types of benefit plans must, at a minimum, cover the benefits and services
44 outlined in the National Association of Insurance Commissioners' (NAIC) Model

1 Health Pool for Uninsurable Individuals Act and be consistent with comprehensive
2 coverage generally available to persons who are eligible for individual health insurance
3 other than Medicare. All benefit plans offered by the Pool shall include disease or case
4 management services.

5 (b) The Board, upon the recommendation of the Executive Director, shall adopt
6 rules regarding the lifetime limits and per individual combined coinsurance and
7 deductibles for the health insurance products offered by the Pool. The initial rules shall
8 include not less than one million dollars (\$1,000,000) lifetime limit and a combined
9 annual limit of up to five thousand dollars (\$5,000) per individual on coinsurance and
10 deductibles. The Board, upon recommendation of the Executive Director, shall adopt
11 rules adjusting these limitations at least once every five years to reflect changes in the
12 medical component of the Consumer Price Index. When adopting or adjusting lifetime
13 limits the Board may establish categories of diseases that may be more seriously
14 impacted by the lifetime limits than other diseases covered under the Pool.

15 **"§ 58-50-210. Preexisting conditions.**

16 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
17 expenses incurred during the first 12 months following the effective date of coverage as
18 to any condition for which medical advice, care, or treatment was recommended or
19 received as to such conditions during the 12-month period immediately preceding the
20 effective date of coverage, except that no preexisting condition exclusion shall be
21 applied to a federally defined eligible individual.

22 (b) Subject to subsection (a) of this section, the preexisting condition exclusions
23 shall be waived to the extent that similar exclusions, if any, have been satisfied under
24 any prior health insurance coverage that was involuntarily terminated, provided that:

25 (1) Application for Pool coverage is made not later than 63 days following
26 the involuntary termination, and in such case coverage in the Pool
27 shall be effective from the date on which the prior coverage was
28 terminated; and

29 (2) The applicant is not eligible for continuation or conversion rights that
30 would provide coverage substantially similar to Pool coverage.

31 **"§ 58-50-215. Nonduplication of benefits.**

32 (a) The Pool shall be payor of last resort of benefits whenever any other benefit
33 or source of third-party payment is available. Benefits otherwise payable under
34 coverage shall be reduced by all amounts paid or payable through any other medical
35 care benefits and by all hospital and medical expenses paid or payable under any
36 workers' compensation coverage notwithstanding any provision of law to the contrary,
37 automobile medical payment, or liability insurance, whether provided on the basis of
38 fault or no-fault, and by any hospital or medical benefits paid or payable under or
39 provided pursuant to any State or federal law or program.

40 (b) The Pool shall have a cause of action against an eligible person for the
41 recovery of the amount of benefits paid that are not for covered expenses. Benefits due
42 from the Pool may be reduced or refused as a setoff against any amount recoverable
43 under this subsection.

44 **"§ 58-50-220: Reserved for future codification purposes.**

"§ 58-50-225. North Carolina Health Insurance Risk Pool Special Fund.

(a) The North Carolina Health Insurance Risk Pool Special Fund is established as an interest-bearing, non-reverting account in the General Fund. The Special Fund consists of the following revenue:

(1) Premiums, fees, charges, rebates, refunds, and any other receipts occurring or arising in connection with the Pool.

(2) An annual General Fund appropriation of twenty-one million two hundred thousand dollars (\$21,200,000); sixteen million two hundred thousand dollars (\$16,200,000) of this amount represents the savings to the General Fund from repealing the income tax credit for small business employee health benefits.

(3) Gifts, grants, and other appropriations.

(b) Disbursements from the Special Fund shall include the amounts required to pay the claims, benefits, and administrative costs as may be determined by the Executive Director and the Board. Disbursement from the Special Fund may be made by warrant drawn on the State Treasurer by the Executive Director, or the Executive Director and the Board may by contract authorize the Administrator to draw the warrant.

"§ 58-50-230. Complaint procedures.

An applicant or participant in coverage from the Pool is entitled to have complaints against the Pool reviewed by a grievance committee appointed by the Executive Director. Members of the Board shall not serve on the grievance committee. The grievance process shall comply with G.S. 58-50-62. The grievance committee shall report to the Board after completion of the review of each complaint. The Executive Director shall retain all written complaints regarding the Pool at least until the third anniversary of the date the Pool received the complaint. Independent review of an appeal decision upholding a noncertification or a second-level grievance review decision upholding a noncertification shall be subject to review pursuant to Part 4 of this Article.

"§ 58-50-235. Audit.

An audit of the Pool shall be conducted annually under the oversight of the State Auditor. The cost of the audit shall be reimbursed to the State Auditor from the Special Fund.

"§ 58-50-240. Taxation.

The Pool established under this Part is exempt from any and all State taxes.

"§ 58-50-245. Rules.

The Board and the Commissioner may adopt rules pursuant to Chapter 150B of the General Statutes, including temporary rules, to implement this Part.

"§ 58-50-250. Collective action.

The establishment of rates, forms, or procedures and any other joint or collective action required by this Part may not be the basis of any legal action or criminal or civil liability or penalty against the Pool or any insurer.

"§ 58-50-255. Pool financing; Board reporting.

(a) The Board shall monitor methods of financing the Pool to ensure a stable funding source and allow for its continued operation. This monitoring shall include supplementary sources of funding, such as funds obtained from public and private not-for-profit foundations, or other appropriate and available State or non-State funds. The Board shall also review on a regular basis:

- (1) The number of individuals in this State who are uninsured as of a date certain because of high-risk conditions.
- (2) The number of uninsured individuals who would qualify for coverage under the Pool based on G.S. 58-50-195 and its Plan of Operation.
- (3) The cost of coverage under each of the health insurance plans developed by the Board, including administrative costs.
- (4) The status of a request by the State to the Centers for Medicare and Medicaid Services for approval of the North Carolina Health Insurance Risk Pool to be considered an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e).
- (5) Methods for providing a premium subsidy on a sliding scale basis for individuals with incomes up to three hundred percent (300%) of the federal poverty guidelines.

(b) The Board shall report its findings and recommendations to the General Assembly on March 1, 2008, and annually thereafter.

"§§ 58-50-260 through 265: Reserved for future codification purposes."

SECTION 1.2. On or before January 1, 2008, the Executive Director shall notify the Centers for Medicare and Medicaid Services that the State has established the North Carolina Health Insurance Risk Pool and shall request that the North Carolina Health Insurance Risk Pool be approved as an acceptable "alternative mechanism" under the federal Health Insurance Portability and Accountability Act in accordance with 45 C.F.R. § 148.128(e). The Executive Director shall notify the Commissioner when the Centers for Medicare and Medicaid Services approve the request.

SECTION 1.3. The Executive Director shall study methods for encouraging healthy behaviors among the Pool's insureds and report the Executive Director's findings to the Board and to the General Assembly not later than one year after initial implementation of the Pool.

SECTION 1.4. Notwithstanding G.S. 58-50-210(a), individuals enrolling in the Pool within six months of the date that enrollment into the Pool first begins shall be subject to a six-month preexisting condition waiting period.

SECTION 1.5. G.S. 120-70.111(a) reads as rewritten:

"(a) The Joint Legislative Health Care Oversight Committee shall review, on a continuing basis, the provision of health care and health care coverage to the citizens of this State, in order to make ongoing recommendations to the General Assembly on ways to improve health care for North Carolinians. To this end, the Committee shall study the delivery, availability, and cost of health care in North Carolina. The Committee shall also review, on a continuing basis, the implementation of the State Health Insurance Program for Children established under Part 8 of Article 2 of Chapter 108A of the

1 General Statutes. As part of its review, the Committee shall advise and consult with the
2 Department of Health and Human Services as provided under G.S. 108A-70.21. The
3 Committee shall review, on a continuing basis, the implementation of the North
4 Carolina Health Insurance Risk Pool established under Part 6 of Article 50 of Chapter
5 58 of the General Statutes. As part of its review, the Committee shall advise and consult
6 with the Executive Director of the North Carolina Health Insurance Risk Pool as
7 provided under G.S. 58-50-180. The Committee may also study other matters related to
8 health care and health care coverage in this State."

9 **SECTION 2.1.** In addition to the North Carolina Health Insurance Risk Pool
10 Special Fund established under G.S. 58-50-225, as enacted in this act, there is
11 established in the Department of Insurance two separate funds, as follows:

12 (1) The Start-Up Reserve – State Funds. State funds appropriated to this
13 Fund shall be used to support reasonable expenses for personnel to
14 carry out the Board's responsibilities under the Pool, including
15 contracting a third-party administrator. Funds shall be allocated by the
16 Commissioner of Insurance for the reasonable expenses of the Board
17 in conducting its duties under this Article that are incurred on or before
18 July 1, 2009. At the end of the fiscal year, any unspent and
19 unencumbered State funds and any interest or investment income
20 earned on these funds shall not revert to the General Fund but shall be
21 transferred to the North Carolina Health Insurance Risk Pool Special
22 Fund.

23 (2) The Start-Up Reserve – Federal Funds. Federal funds received in lump
24 sum or as a draw-down grant for the purposes of this Article shall be
25 deposited to this Reserve and shall be expended and accounted for in
26 accordance with requirements of the federal grant.

27 **SECTION 2.2.** It is the intent of the General Assembly that in the event the
28 State is not awarded the federal funds anticipated, the General Fund shall be held
29 harmless.

30 **SECTION 3.** There is appropriated from the General Fund to the Start-Up
31 Reserve – State Funds established under Section 2.1 of this act, the sum of two hundred
32 fifty thousand dollars (\$250,000) for the 2007-2008 fiscal year. These funds shall be
33 allocated for the purposes of and in accordance with Section 2.1 of this act. Unspent
34 and unencumbered funds remaining on June 30, 2008, shall not revert to the General
35 Fund but shall be used for the purposes described in Section 2.1 of this act.

36 **SECTION 4.** G.S. 105-129.16E, credit for small business employee health
37 benefits, is repealed. As provided in G.S. 58-50-225, as enacted in this act, savings to
38 the General Fund from the repeal of the credit for small business employee health
39 insurance will be appropriated on a recurring basis to the North Carolina Health
40 Insurance Risk Pool, as enacted by this act, for claims and other expenses of the North
41 Carolina Health Insurance Risk Pool.

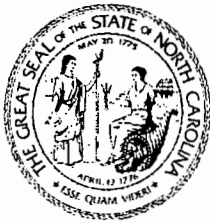
42 **SECTION 5.** Notwithstanding G.S. 143C-9-3(b) and G.S. 147-86.30, of the
43 funds credited to the Health Trust Account from the Master Settlement Agreement
44 pursuant to Section 6(2) of S.L. 1992 during the 2008-2009 fiscal year, the sum of five

1 million dollars (\$5,000,000) for the 2008-2009 fiscal year shall be transferred from the
2 Department of State Treasurer, Budget Code 23460 (Health and Wellness Trust Fund)
3 to the State Controller to be deposited in Nontax Budget Code 19978 (Intra State
4 transfers) to support General Fund appropriations by the 2007 General Assembly,
5 Regular Session 2008, for operations and claims of the North Carolina Health
6 Insurance Risk Pool, as enacted by this act.

7 **SECTION 6.** For the purposes of providing the funds necessary to carry out
8 the powers and duties of the Pool, effective July 1, 2008, the Teachers' and State
9 Employees' Comprehensive Major Medical Plan and any successor Plan shall pay an
10 annual surcharge to the North Carolina Health Insurance Risk Pool Special Fund in the
11 amount of one dollar and fifty cents (\$1.50) per member per month based on enrollment
12 of active employee Plan members and their dependents covered under the Plan.

13 **SECTION 7.** The provisions of this act are severable. If any provision of
14 this act is held invalid by a court of competent jurisdiction, the invalidity does not affect
15 other provisions of the act that can be given effect without the invalid provision.

16 **SECTION 8.** Sections 2.1, 2.2, and 3 of this act become effective July 1,
17 2007, and expire July 1, 2009. The remainder of this act is effective when it becomes
18 law. Enrollment in the Pool shall commence no later than January 1, 2009.



HOUSE BILL 265: Establish High-Risk Pool

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 18, 2007
Introduced by:	Reps. Insko, Holliman, England, Underhill	Summary by:	Tim Hovis
Version:	PCS to Sixth Edition H265-CS80470		Committee Counsel

SUMMARY: *House Bill 265 would establish the North Carolina Health Insurance Risk Pool, the purpose of which would be to enable individuals with high-risk health conditions to obtain health insurance coverage at premium rates that are more affordable than currently available rates. Pool financing would be achieved through a combination of enrollee premiums and appropriations with an initial federal grant award and State appropriations to fund Board operating expenses and Pool start-up costs.*

Appropriation provisions of the act would become effective July 1, 2007. If it becomes law, the act requires enrollment in the Pool to commence no later than January 1, 2009.

BILL ANALYSIS: House Bill 265 would create a new Part 6 of Article 50 of Chapter 58 of the General Statutes that would establish the North Carolina Health Insurance Risk Pool. The Pool would be established as a nonprofit entity and would be operated by the Executive Director of the Pool, under the supervision and control of the Board of Directors of the Pool. The Pool would be administered by one or more insurers selected by the Executive Director of the Pool, in collaboration with the Board, through a competitive bidding process. The Pool would operate according to a Plan of Operation developed by the Board, effective upon receipt of written approval of the Plan by the Commissioner of Insurance.

Plan of Operation for the Pool – The act would specify the contents of the Board of Directors' Plan of Operation for the Pool and would authorize the Pool to perform functions necessary to establish and administer the Pool¹. The Board would be required to submit a Plan of Operation to the Commissioner of Insurance for the Commissioner's written approval. The Executive Director of the Pool, with the approval of the Board, would operate the Pool and would submit an annual report regarding earned premiums, plan enrollment, administrative expenses, and losses to the Speaker of the House of Representatives, President Pro Tempore of the Senate, the Joint Legislative Health Care Oversight Committee and the Committee on Employee Hospital and Medical Benefits. The Board would be authorized to cap or suspend enrollment if expenses were anticipated to exceed available funds, except for enrollment by federally defined eligible individuals.

Eligibility and Exclusions²:

- An individual who is a resident of the State would be eligible for Pool coverage if evidence is provided of:
 - a notice of rejection from an insurer to provide substantially similar health insurance because of the individual's health;

¹ Proposed G.S. 58-50-180.

² Proposed G.S. 58-50-195.

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- an offer to issue insurance only with a conditional rider limiting coverage of the individual's high-risk condition;
 - refusal by an insurer to issue health insurance except at a rate exceeding the Pool rate;
 - a diagnosis of the individual with one of the medical conditions listed by the Board;
 - the individual's maintenance of health insurance coverage under federal criteria without a significant break in coverage and the exhaustion of COBRA or state continuation benefits;
 - the individual's legal domicile in State and eligibility for health insurance costs under the Trade Adjustment Assistance Reform Act of 2002; or
 - the individual's maintenance of health insurance coverage at a rate exceeding the Pool rate.
- An individual would be excluded from Pool coverage if:
 - they have health insurance coverage substantially similar to that offered by Pool (with the exception of coverage during preexisting condition waiting period);
 - they are eligible for enrollment in the State Medical Assistance Plan;
 - they have terminated Pool coverage within the past 12 months;
 - they are an inmate or resident of a public institution;
 - they have their premiums paid by a government-sponsored program or government agency or health care provider; or
 - they have health insurance coverage from an insurer or insurance arrangement on the date Pool coverage takes effect.

Pool Administration, Rates and Preexisting Conditions – The Executive Director, in collaboration with the Board, would select a Pool administrator through a competitive bidding process³. The Pool would establish a risk rate of 150% to 200% of rates established as applicable for individual standard risks⁴. The Pool would offer at least two types of benefit plans including preferred provider organizations with different deductible levels and cost sharing and at least one choice of a health savings account. At least two types of benefit plans must, at a minimum, provide benefits outlined in the National Association of Insurance Commissioners' Model Health Plan for Uninsurable Individuals Act and be consistent with comprehensive coverage generally available⁵.

Under the Board's initial rules, benefit plans offered by the Pool would include a lifetime benefit limit of not less than \$1,000,000 and an annual limit on out-of-pocket expenses of up to \$5,000⁶. When adopting or adjusting lifetime limits, the Board may establish categories of diseases that may be more seriously impacted by the lifetime limits.

During the first 12 months of an individual's coverage, the Pool would not cover health conditions existing within 12 months prior to coverage (except for federally defined eligible individuals)⁷. For individuals enrolling into the Pool during the first six months that enrollment is made available, the preexisting condition waiting period would be reduced to six months. The Pool would allow for a waiver of exclusion where similar exclusions have been satisfied under another health insurance plan, and

³ Proposed G.S. 58-50-185.

⁴ Proposed G.S. 58-50-190.

⁵ Proposed G.S. 58-50-205.

⁶ Proposed G.S. 58-50-205(b).

⁷ Proposed G.S. 50-210.

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coverage lapsed for no more than 63 days and the applicant was ineligible for substantially similar continuation insurance.

Pool Funding –G.S. 58-50-225 of the bill creates a fund known as the North Carolina Health Insurance Risk Pool Special Fund. The Fund would be established as an interest-bearing, non-reverting account in the General Fund and would consist of the following revenues: (1) premiums, fees, charges, rebates, refunds, or any other receipts including earnings on investments; (2) an annual General Fund appropriation of \$21,200,000, of which \$16,200,000 represents the savings to the General Fund from the repeal of the income tax credit for small business employee health benefits; and (3) gifts, grants, and other appropriations.

Repeal of the income tax credit for small business employee health benefits is in Section 4 of the bill.

Disbursements from the Reserve include all amounts required to pay claims, benefits, and administrative costs as determined by the Executive Director and the Board.

Section 2.1 of the bill establishes two separate funds in the Department of Insurance for the Pool: (1) Start-Up Reserve – State Funds to support reasonable expenses of the Board in carrying out its duties under the Pool (interest and investment income transferred from the Reserve to the General Fund at end of the fiscal year); and (2) Start-Up Reserve – Federal Funds where Federal grant funds awarded would be placed (transferred from the Reserve to the General Fund at the end of the fiscal year in an amount not to exceed the amount of State appropriations).

Section 3 of the bill includes an appropriation from the General Fund of \$250,000 for the 2007-2008 fiscal year to the Start-Up Reserve—State Funds.

Section 5 of the bill directs the sum of \$5,000,000 for the 2008-2009 fiscal year of the funds credited to the Health Trust Account from the Master Settlement Agreement (tobacco settlement) to be transferred from the Health and Wellness Trust Fund to the General Fund to support appropriations by the 2007 General Assembly, Regular Session 2008 for the operations and claims of the Pool.

Section 6 of the bill imposes an annual surcharge of \$1.50 per member per month on the Teachers' and State Employees' Comprehensive Major Medical Plan to provide funds necessary to carry out the powers and duties of the Pool.

BACKGROUND: In its December 2006 Final Report to the House of Representatives, the House Select Committee on Health Care recommended that the General Assembly enact legislation to implement a health insurance high-risk pool to enable individuals with high-risk health conditions to obtain health insurance.

The 2006 Final Report of the North Carolina Institute of Medicine Task Force on Covering the Uninsured addressed a range of issues relating to the uninsured population of this State, including high-risk pools. Senate Bill 163 incorporates many of the details put forth by the Institute.

Currently, 34 states have established or are establishing high-risk health insurance pools. The Federal Trade Act of 2002 provides a federal grant of up to \$1,000,000 to each state establishing new pools. This seed money may be used to fund the start-up costs of creating a pool, but not for ongoing financing of the Pool. The Department of Insurance received a partial grant in 2006, in the amount of \$150,000, for preliminary work relating to the establishment of a high-risk insurance pool in North Carolina, so a balance of \$850,000 may be available for high-risk pool start-up costs in this State. The act also provided for a matching federal grant of up to 50% of the losses incurred by a state in connection with

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the operation of the pool. \$40,000,000 was appropriated for each fiscal year 2003 and 2004. In 2003, Congress passed legislation extending and providing additional federal funding through 2009.

EFFECTIVE DATE: Appropriation provisions of the act (Sections 2.1, 2.2, and 3) become effective July 1, 2007, and expire July 1, 2009. The remainder of the act is effective when it becomes law. If the bill becomes law, enrollment in the North Carolina Health Insurance Risk Pool would be required to commence no later than January 1, 2009.

*This summary was substantially contributed to by Ms. Kory Goldsmith, Staff Attorney.

H0265e6-SMRG-CS80470

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/19/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

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ROBERT T. MORGAN	NC DOR
Greg Davis	DOR/SCO
Donna Andrews	LAWA
DANIEL BARN	KCC
Bill O'Donnell	NC SBA
Becky Gray	John Locke Foundation
Jim Mott	JD, AL, PA
Paul Mager	NC GO
Anthony S. Wood	R. Woodhouse
Julia Loggell	The Arc of NC

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee 07/19/07
Name of Committee Date

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Robert Paschal	Young Moore
David Stoller	State Farm
Russ Bubisky	IFNC
Cathy Wight	NCHS
Rose Williams	DOI
Marge Roman	NCHS
John Bowditch	Astrazeneca
Mark Fleming	BCBS
John McMillen	MFOS
R. Paul Wilms	NCH/ISA

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Senate Commerce, Small Business & Entrepreneurship Committee 07/19/07

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

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NMSS-NC

Ad's

12

Janel Jones

NCHS

Tommy Soter

WYETH

John R. Allen

April

W. 11 Pubs

LT. Gov. Office.

**Senate Commerce, Small Business and Entrepreneurship
Committee
Tuesday, July 24, 2007, 11:00 AM
1027, LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1489	Protect Consumers/Life Settlement Transaction.	Representative Holliman
HB 1650	Increase Membership/Acupuncture Licensing Bd.	Representative Fisher
HB 1702	Conserve Energy/Insulate Hot Water Plumbing.	Representative Faison Representative Allen
HB 1718	Cities Enact Fair Housing Ordinances.	Representative Adams Representative Jones Representative Wiley

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE

Tuesday, July 24, 2007

Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on July 24, 2007 in Room 1027 of the Legislative Building. Twenty-one members of the Committee were present. Senator R. C. Soles, Jr. presided.

Senator Soles said the first order of business would be to consider H.C. B. 1718, Cities Enact Fair Housing Ordinances, and he recognized Representative Wiley to explain the bill. Senator Goss offered amendment No. 1 and moved for its adoption. The motion carried. Senator Apodoca moved for a favorable report for the committee substitute bill, as amended, and that the bill be rewritten into a Committee Substitute. The motion carried.

Senator Soles then recognized Representative Faison to explain H.C. B. 1702, Conserve Energy/Insulate Hot Water Plumbing. Senator Purcell moved for a favorable report for the committee substitute bill. The motion carried.

Senator Soles introduced and recognized the following pages who are serving this week: Rachel Gallimore, Asheboro, sponsored by Senator Tillman; Cora Shull, Greensboro, sponsored by Senator Hagan, Morgan Jones, Angier, sponsored by Senator Swindell, and Krissy Garmon, Gastonia, sponsored by Senator Hoyle.


Senator Soles recognized Representative Fisher to explain H.B. 1650, Increase Membership/Acupuncture Licensing Board. Senator Dorsett moved for a favorable report. The motion carried.

H.B. 1489, Protect Consumers/Life Settlement Transaction was the last item on the agenda. Senator Soles recognized Senator Blake, who moved for adoption of the Senate Committee Substitute bill. The motion carried. He then recognized Representative Holliman to explain the bill. Speaking in favor of the bill were Insurance Commissioner Jim Long, and Mr. George Teague representing Nelson, Mullins, Riley & Scarborough, LLP. In addition, Michael Freedman, Esq. from Coventry in Philadelphia, Pennsylvania spoke in opposition to the bill.

Senator Stevens offered Amendments 1 and 2 and moved for their adoption. The motion carried. After discussion by members, staff, and guests, Senator Soles advised the committee that due to the complexities of the Senate Committee Substitute with the adopted amendments, he was requesting staff to have the amendments engrossed into the Senate Committee Substitute for further discussion and debate at the next committee meeting on Thursday, July 26, 2007.

The meeting adjourned at 12 Noon.


Senator R. C. Soles, Jr., Presiding


Mona Fitzgerald, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Tuesday, July 24, 2007

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE
AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 1718

Cities Enact Fair Housing Ordinances.

Draft Number: PCS60393

Sequential Referral: None

Recommended Referral: None

Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 1718

Committee Substitute Favorable 5/17/07

Short Title: Cities Enact Fair Housing Ordinances.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CERTAIN CITIES TO ENACT FAIR HOUSING ORDINANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 160A of the General Statutes is amended by adding the following new section to read:

"§ 160A-499.1. Fair housing ordinance.

(a) A municipality shall have the power to adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions. The ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a criminal offense; may subject the offender to civil penalties; and may provide that the municipality may enforce the ordinances by application to the Superior Court Division of the General Court of Justice for appropriate legal and equitable remedies, including mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court shall have jurisdiction to grant the remedies.

(b) A municipality also shall have the power to amend any ordinance adopted pursuant to the provisions contained in subsection (a) of this section to ensure that the ordinance remains substantially equivalent to the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.). Any ordinance enacted pursuant to this section prohibiting discrimination on the basis of familial status shall not apply to housing for older persons, as defined in the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.).

(c) Any ordinance enacted pursuant to this section may provide for exemption from its coverage:

(1) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently

1 of each other if the lessor or a member of his family resides in one of
2 those accommodations.

3 (2) The rental of a room or rooms in a housing accommodation by an
4 individual if he or a member of his family resides there.

5 (3) With respect to discrimination based on sex, the rental or leasing of
6 housing accommodations in single-sex dormitory property.

7 (4) With respect to discrimination based on religion to housing
8 accommodations owned and operated for other than a commercial
9 purpose by a religious organization, association, or society, or any
10 nonprofit institution or organization operated, supervised, or controlled
11 by or in conjunction with a religious organization, association, or
12 society, the sale, rental, or occupancy of the housing accommodation
13 being limited or preference being given to persons of the same
14 religion, unless membership in the religion is restricted because of
15 race, color, national origin, or sex.

16 (5) Any person, otherwise subject to its provisions, who adopts and carries
17 out a plan to eliminate present effects of past discriminatory practices
18 or to assure equal opportunity in real estate transactions, if the plan is
19 part of a conciliation agreement entered into by that person under the
20 provisions of the ordinance.

21 (d) A municipality may create or designate a committee to assume the duty and
22 responsibility of enforcing ordinances adopted pursuant to this section. The committee
23 may be granted any authority deemed necessary by the city council for the proper
24 enforcement of any fair housing ordinance, including the power to:

25 (1) Promulgate rules for the receipt, initiation, investigation, and
26 conciliation of complaints of violations of the ordinance.

27 (2) Require answers to interrogatories, the production of documents and
28 things, and the entry upon land and premises in the possession of a
29 party to a complaint alleging a violation of the ordinance; compel the
30 attendance of witnesses at hearings; administer oaths; and examine
31 witnesses under oath or affirmation.

32 (3) Apply to the Superior Court Division of the General Court of Justice,
33 upon the failure of any person to respond to or comply with a lawful
34 interrogatory, request for production of documents and things, request
35 to enter upon land and premises, or subpoena, for an order requiring
36 the person to respond or comply.

37 (4) Upon finding reasonable cause to believe that a violation of the
38 ordinance has occurred, to petition the Superior Court Division of the
39 General Court of Justice for appropriate civil relief on behalf of the
40 aggrieved person or persons.

41 (e) A municipality may provide that neither complaints filed with any committee
42 pursuant to the ordinance nor the results of the committee's investigations, discovery, or
43 attempts at conciliation, in whatever form prepared and preserved, shall be subject to

1 inspection, examination, or copying under the provisions of what is now Chapter 132 of
2 the General Statutes.

3 (f) A municipality may provide that the statutory provisions relating to meetings
4 of governmental bodies, presently embodied in Article 33C of Chapter 143 of the
5 General Statutes, shall not apply to the activity of any committee authorized to enforce
6 the ordinance to the extent that the committee is receiving a complaint or conducting an
7 investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the
8 ordinance."

9 **SECTION 2.** This act applies only to municipalities that have a permanent
10 population of 90,000 according to the most recent decennial census, and that are the
11 location of a recurring special accommodation event requiring temporary
12 accommodations for at least 50,000 people. For purposes of this act, the term "recurring
13 special accommodation event" means a trade show or other event of less than 11 days
14 duration that has been held in the municipality at least once a year for at least 10 years.

15 **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. 1718

DATE _____

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) 6055
(Sen.)

1 moves to amend the bill on page 3, line 10

2 () WHICH CHANGES THE TITLE

3 by adding "or more" after "90,000"

4 _____

5 _____

6 _____

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12 _____

13 _____

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17 _____

18 _____

19 _____

SIGNED Steve Goss

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)



HOUSE BILL 1718: Cities Enact Fair Housing Ordinances

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 24, 2007
Introduced by:	Reps. Wiley, Jones, Adams	Summary by:	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: *House Bill 1718 authorizes the City of High Point to enact a fair housing ordinance.*

CURRENT LAW: Under the State Fair Housing Act (Chapter 41A of the General Statutes), it is unlawful for any person in a real estate transaction to discriminate against a person because of race, color, religion, sex, national origin, handicapping condition, or familial status. Fair housing complaints may be filed with the North Carolina Human Relations Commission for investigation. G.S. 41A-7(c) provides that whenever another unit of government with equal authority to investigate has jurisdiction over the subject matter of a complaint, the Commission shall be divested of jurisdiction over the complaint.

BILL ANALYSIS: House Bill 1718 authorizes a municipality that meets the characteristics described in Section 2 of the bill (High Point) to enact an ordinance prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions. The bill provides that a municipality may establish a committee to enforce an ordinance adopted pursuant to this bill. The bill also provides that complaints and investigations of any committee created pursuant to a fair housing ordinance enacted under this bill may be exempted from the public records and open meetings laws of the State.

EFFECTIVE DATE: The bill is effective when it becomes law.

BACKGROUND: House Bill 1718 is modeled on Article VII of the Charter of the City of Charlotte governing fair housing.

Giles Perry, counsel to House Judiciary III, contributed to this summary.

H1718e2-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 1718

Committee Substitute Favorable 5/17/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1718-PCS60393-SU-65

Short Title: Cities Enact Fair Housing Ordinances.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CERTAIN CITIES TO ENACT FAIR HOUSING ORDINANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 21 of Chapter 160A of the General Statutes is amended by adding the following new section to read:

"§ 160A-499.1. Fair housing ordinance.

(a) A municipality shall have the power to adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions. The ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a criminal offense; may subject the offender to civil penalties; and may provide that the municipality may enforce the ordinances by application to the Superior Court Division of the General Court of Justice for appropriate legal and equitable remedies, including mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court shall have jurisdiction to grant the remedies.

(b) A municipality also shall have the power to amend any ordinance adopted pursuant to the provisions contained in subsection (a) of this section to ensure that the ordinance remains substantially equivalent to the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.). Any ordinance enacted pursuant to this section prohibiting discrimination on the basis of familial status shall not apply to housing for older persons, as defined in the federal Fair Housing Act (41 U.S.C. §§ 3601, et seq.).

(c) Any ordinance enacted pursuant to this section may provide for exemption from its coverage:

- (1) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations.
 - (2) The rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there.
 - (3) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.
 - (4) With respect to discrimination based on religion to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental, or occupancy of the housing accommodation being limited or preference being given to persons of the same religion, unless membership in the religion is restricted because of race, color, national origin, or sex.
 - (5) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of the ordinance.
- (d) A municipality may create or designate a committee to assume the duty and responsibility of enforcing ordinances adopted pursuant to this section. The committee may be granted any authority deemed necessary by the city council for the proper enforcement of any fair housing ordinance, including the power to:
- (1) Promulgate rules for the receipt, initiation, investigation, and conciliation of complaints of violations of the ordinance.
 - (2) Require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings; administer oaths; and examine witnesses under oath or affirmation.
 - (3) Apply to the Superior Court Division of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring the person to respond or comply.
 - (4) Upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition the Superior Court Division of the General Court of Justice for appropriate civil relief on behalf of the aggrieved person or persons.
- (e) A municipality may provide that neither complaints filed with any committee pursuant to the ordinance nor the results of the committee's investigations, discovery, or

1 attempts at conciliation, in whatever form prepared and preserved, shall be subject to
2 inspection, examination, or copying under the provisions of what is now Chapter 132 of
3 the General Statutes.

4 (f) A municipality may provide that the statutory provisions relating to meetings
5 of governmental bodies, presently embodied in Article 33C of Chapter 143 of the
6 General Statutes, shall not apply to the activity of any committee authorized to enforce
7 the ordinance to the extent that the committee is receiving a complaint or conducting an
8 investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the
9 ordinance."

10 **SECTION 2.** This act applies only to municipalities that have a permanent
11 population of 90,000 or more according to the most recent decennial census and that are
12 the location of a recurring special accommodation event requiring temporary
13 accommodations for at least 50,000 people. For purposes of this act, the term "recurring
14 special accommodation event" means a trade show or other event of less than 11 days'
15 duration that has been held in the municipality at least once a year for at least 10 years.

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

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Tuesday, July 24, 2007

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

FAVORABLE

H.B.	1650	Increase Membership/Acupuncture Licensing Bd.
		Sequential Referral: None
		Recommended Referral: None
H.B.(CS #1)	1702	Conserve Energy/Insulate Hot Water Plumbing.
		Sequential Referral: None
		Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 1702

Committee Substitute Favorable 5/23/07

Short Title: Conserve Energy/Insulate Hot Water Plumbing.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO CONSERVE ENERGY AND TO REQUIRE A STUDY OF THE
DEGREE OF INSULATION FOR HOT WATERLINES THAT SHOULD BE
REQUIRED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire prevention code provisions shall be considered the minimum standards necessary to preserve and protect public health and safety, subject to approval by the Council of more stringent provisions proposed by a municipality or county as provided in G.S. 143-138(e). These provisions may include regulations requiring the installation of either battery-operated or electrical smoke detectors in every dwelling unit used as rental property, regardless of the date of construction of the rental property. For dwelling units used as rental property constructed prior to 1975, smoke detectors shall

1 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing
2 laboratory approval, and shall be installed in accordance with either the standard of the
3 National Fire Protection Association or the minimum protection designated in the
4 manufacturer's instructions, which the property owner shall retain or provide as proof of
5 compliance.

6 The Code may contain provisions regulating every type of building or structure,
7 wherever it might be situated in the State.

8 Provided further, that nothing in this Article shall be construed to make any building
9 rules applicable to farm buildings located outside the building-rules jurisdiction of any
10 municipality.

11 Provided further, that no building permit shall be required under the Code or any
12 local variance thereof approved under subsection (e) for any construction, installation,
13 repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any
14 single family residence or farm building unless the work involves: the addition, repair,
15 or replacement of load bearing structures; the addition (excluding replacement of same
16 size and capacity) or change in the design of plumbing; the addition, replacement or
17 change in the design of heating, air conditioning, or electrical wiring, devices,
18 appliances, or equipment, the use of materials not permitted by the North Carolina
19 Uniform Residential Building Code; or the addition (excluding replacement of like
20 grade of fire resistance) of roofing.

21 Provided further, that no building permit shall be required under such Code from any
22 State agency for the construction of any building or structure, the total cost of which is
23 less than twenty thousand dollars (\$20,000), except public or institutional buildings.

24 For the information of users thereof, the Code shall include as appendices the
25 following:

- 26 (1) Any rules governing boilers adopted by the Board of Boiler and
27 Pressure Vessels Rules,
- 28 (2) Any rules relating to the safe operation of elevators adopted by the
29 Commissioner of Labor, and
- 30 (3) Any rules relating to sanitation adopted by the Commission for Health
31 Services which the Building Code Council believes pertinent.

32 In addition, the Code may include references to such other rules of special types,
33 such as those of the Medical Care Commission and the Department of Public Instruction
34 as may be useful to persons using the Code. No rule issued by any agency other than the
35 Building Code Council shall be construed as a part of the Code, nor supersede that
36 Code, it being intended that they be presented with the Code for information only.

37 Nothing in this Article shall extend to or be construed as being applicable to the
38 regulation of the design, construction, location, installation, or operation of (1)
39 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases
40 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied
41 petroleum gas from the outlet of the first stage pressure regulator to and including each
42 liquefied petroleum gas utilization device within a building or structure covered by the
43 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined
44 in G.S. 62-3, or an electric or telephone membership corporation, including without

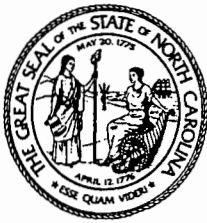
1 limitation poles, towers, and other structures supporting electric or communication
2 lines.

3 In addition, the Code may contain rules concerning minimum efficiency
4 requirements for replacement water heaters, which shall consider reasonable availability
5 from manufacturers to meet installation space ~~requirements~~. requirements and may
6 contain rules concerning energy efficiency that require all hot water plumbing pipes that
7 are larger than one-fourth of an inch to be insulated.

8 No State, county, or local building code or regulation shall prohibit the use of special
9 locking mechanisms for seclusion rooms in the public schools approved under
10 G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be
11 constructed so that it will engage only when a key, knob, handle, button, or other similar
12 device is being held in position by a person, and provided further that, if the mechanism
13 is electrically or electronically controlled, it automatically disengages when the
14 building's fire alarm is activated. Upon release of the locking mechanism by a
15 supervising adult, the door must be able to be opened readily."

16 **SECTION 2.** The North Carolina Building Code Council shall study the
17 extent to which hot waterlines should be insulated to achieve greater energy efficiency
18 and shall amend the North Carolina State Building Code as necessary to achieve those
19 ends. The Council shall report its findings and actions to the Environmental Review
20 Commission and the 2008 Regular Session of the General Assembly on or before 1
21 April 2008.

22 **SECTION 3.** Sections 2 and 3 of this act are effective when this act becomes
23 law. Section 1 of this act becomes effective 1 January 2008 and applies to all new
24 construction for which permits are issued on or after that date.



HOUSE BILL 1702: Conserve Energy/Insulate Hot Water Plumbing

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 24, 2007
Introduced by:	Reps. Faison, Allen	Summary by:	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: *House Bill 1702 would require the North Carolina Building Code Council to study the degree of insulation for hot water lines that should be required to achieve greater energy efficiency.*

CURRENT LAW: The Building Code Council is responsible for adopting the North Carolina State Building Code. G.S. 143-138(b) provides that the Code may include rules governing plumbing in buildings and structures.

BILL ANALYSIS: **Section 1** of House Bill 1702 would amend G.S. 143-138(b) to specifically allow the Building Code Council to adopt rules that require insulation of all hot water plumbing pipes that are larger than one-fourth of an inch.

Section 2 of the bill would require the Building Code Council to study the extent to which hot water lines should be insulated to achieve greater energy efficiency and to amend the State Building Code as necessary to achieve those ends. The Council would be required to report its findings and actions to the Environmental Review Commission and the 2008 Regular Session of the General Assembly on or before May 1, 2008.

EFFECTIVE DATE: Section 2 of this act would become effective when it becomes law. Section 1 of this act would become effective January 1, 2008 and apply to all new construction for which permits are issued on or after that date.

Jennifer Mundt, legislative analyst for House Energy and Energy Efficiency, contributed to this summary.

H1702e2-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 1650

Short Title: Increase Membership/Acupuncture Licensing Bd. (Public)

Sponsors: Representative Fisher.

Referred to: Ways and Means.

April 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE MEMBERSHIP ON THE ACUPUNCTURE LICENSING
3 BOARD FROM SIX TO NINE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 90-453(a) reads as rewritten:

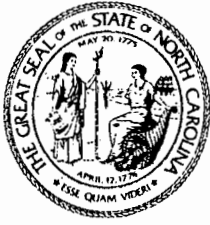
6 "(a) Membership. – The Acupuncture Licensing Board shall consist of ~~six~~nine
7 members, ~~two~~three appointed by the Governor and ~~four~~six by the General Assembly.
8 The ~~four~~six members appointed by the General Assembly shall be licensed to practice
9 acupuncture in this State and shall not be licensed physicians under Article 1 of this
10 Chapter. The persons initially appointed to those positions by the General Assembly
11 need not be licensed at the time of selection but shall have met the qualifications under
12 G.S. 90-455(a)(4) and (5). Of the Governor's ~~two~~three appointments, one shall be a
13 layperson who is not employed in a health care profession; ~~the other one~~ shall be a
14 physician licensed under Article 1 of this Chapter who has successfully completed 200
15 hours of Category 1 American Medical Association credit in medical acupuncture
16 training as recommended by the American Academy of Medical
17 ~~Acupuncture~~Acupuncture; and one shall be licensed to practice acupuncture in this
18 State. Of the members to be appointed by the General Assembly, ~~two~~three shall be
19 appointed upon the recommendation of the Speaker of the House of Representatives,
20 and ~~two~~three shall be appointed upon the recommendation of the President Pro
21 Tempore of the Senate. The members appointed by the General Assembly must be
22 appointed in accordance with G.S. 120-121.

23 Members serve at the pleasure of the appointing authority. Vacancies shall be filled
24 by the original appointing authority and the term shall be for the balance of the
25 unexpired term. A vacancy by a member appointed by the General Assembly must be
26 filled in accordance with G.S. 120-122."

27 **SECTION 2.** Notwithstanding the provisions of G.S. 90-453(a), as enacted
28 in Section 1 of this act, the member appointed by the Governor who shall be licensed to
29 practice acupuncture in this State and the two members appointed by the General

1 Assembly, one upon the recommendation of the Speaker of the House of
2 Representatives and one upon the recommendation of the President Pro Tempore of the
3 Senate, shall each serve a three-year term commencing July 1, 2007, and ending June
4 30, 2010. Members described in this section shall serve for the terms for which they
5 were appointed and until their successors are appointed and qualified.

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



HOUSE BILL 1650: Increase Membership/Acupuncture Licensing Bd

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 23, 2007
Introduced by:	Rep. Fisher	Summary by:	Tim Hovis
Version:	First Edition		Committee Counsel

SUMMARY: *House Bill 650 would increase the membership of the Acupuncture Licensing Board from 6 to 9 members.*

BILL ANALYSIS: Section 1 of House Bill 1650 amends G.S. 90-153(a) to increase the membership of the Acupuncture Licensing Board from 6 to 9 members. The bill increases the Governor's appointees from 2 to 3 and increases the appointees of the General Assembly from 4 to 6 members. Of the Governor's appointees, the bill requires that one must be licensed to practice acupuncture in this State.

Newly appointed members shall serve three-year terms beginning July 1, 2007 and ending June 30, 2010.

EFFECTIVE DATE: House Bill 1650 is effective when it becomes law.

H1650e1-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 1489
Committee Substitute Favorable 5/23/07

Short Title: Protect Consumers/Life Settlement Transaction.

(Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE PROTECTION OF CONSUMERS IN LIFE
SETTLEMENT TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by
adding a new Part to read:

"Part 6. Life Settlement Transactions.

"§ 58-58-320. Definitions.

For the purposes of this Part:

(1) "Life settlement contract" means a written agreement establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. However, the minimum value of a life settlement contract shall be greater than the cash surrender value or accelerated death benefit available at the time of an application for the life settlement contract. Except as provided by sub-subdivision (3)c. of this section, "life settlement contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns the policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts.

"Life settlement contract" includes a premium finance loan made for a life insurance policy by a lender to an owner on, before, or after the date of issuance of the policy if any of the following conditions apply:

a. The loan proceeds are not used solely to pay (i) premiums for the policy or (ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and

1 similar fees, closing costs, legal fees and expenses, trustee fees
2 and expenses, and third-party collateral provider fees and
3 expenses, including fees payable to letter of credit issuers.

4 b. The owner or the insured receives on the date of the premium
5 finance loan a guarantee of a future life settlement value of the
6 policy.

7 c. The owner or the insured agrees on the date of the premium
8 finance loan to sell the policy or any portion of its death benefit
9 on any date following the issuance of the policy.

10 "Life settlement contract" does not include any of the following:

11 a. A policy loan or accelerated death benefit provision contained
12 in the life insurance policy, whether issued with the original
13 policy or as a rider.

14 b. A loan made by a bank or other licensed financial institution in
15 which the lender takes an interest in a life insurance policy
16 solely to secure repayment of the loan or, if there is a default on
17 the loan and the policy is transferred, the further assignment of
18 the policy by the lender, provided that the default itself is not
19 pursuant to an agreement or understanding with any other
20 person for the purpose of evading regulation under this Part.

21 c. A loan made by a lender that does not violate Article 35 of this
22 Chapter, provided that the premium finance loan is not
23 described in the definition of life settlement contract above.

24 d. An agreement where all the parties are closely related to the
25 insured by blood or law or have a lawful substantial economic
26 interest in the continued life, health, and bodily safety of the
27 person insured, or are trusts established primarily for the benefit
28 of the parties.

29 e. Any designation, consent, or agreement by an insured who is an
30 employee of an employer in connection with the purchase by
31 the employer, or trust established by the employer, of life
32 insurance on the life of the employee.

33 f. A bona fide business succession planning arrangement
34 established by any of the following:

35 1. An agreement between one or more shareholders in a
36 corporation or between a corporation and one or more of
37 its shareholders.

38 2. A trust established by shareholders of a corporation.

39 3. An agreement between one or more partners in a
40 partnership or between a partnership and one or more of
41 its partners.

42 4. A trust established by the partners of a partnership.

- 1 5. An agreement between one or more members of a
2 limited liability company or between a limited liability
3 company and one or more of its members.
4 6. A trust established by the members of a limited liability
5 company.
6 g. An agreement entered into by a service recipient and a service
7 provider, a trust established by the service recipient, or a trust
8 established by the service provider who performs significant
9 services for the service recipient's trade or business.
10 h. Any other contract, transaction, or arrangement exempted from
11 the definition of life settlement contract by the Commissioner
12 based on a determination that the contract, transaction, or
13 arrangement is not of the type intended to be regulated under
14 this Part.
15 (2) "Owner" means the owner of a life insurance policy or a certificate
16 holder under a group policy, with or without a terminal illness, who
17 enters or seeks to enter into a life settlement contract. For the purposes
18 of this Part, an owner shall not be limited to an owner of a life
19 insurance policy or a certificate holder under a group policy that
20 insures the life of an individual with a terminal or chronic illness or
21 condition except where specifically addressed. "Owner" does not
22 include any of the following:
23 a. Any provider or other licensee under this Part.
24 b. A qualified institutional buyer as defined in Rule 144A of the
25 Federal Securities Act of 1933, as amended.
26 c. A financing entity.
27 d. A special purpose entity.
28 e. A related provider trust.
29 (3) "Provider" means a person, other than an owner, who enters into or
30 effectuates a life settlement contract with an owner. "Provider" does
31 not include any of the following:
32 a. Any bank, savings bank, savings and loan association, credit
33 union, or other licensed lending institution which takes an
34 assignment of a life insurance policy or certificate issued
35 pursuant to a group life insurance policy solely as collateral for
36 a loan.
37 b. A premium finance company making premium finance loans
38 and exempted by the Commissioner from the licensing
39 requirement under Article 35 of this Chapter that takes an
40 assignment of a life insurance policy solely as collateral for a
41 loan.
42 c. The issuer of the life insurance policy.
43 d. Any natural person who enters into or effectuates no more than
44 one agreement in a calendar year for the transfer of a life

insurance policy or certificate issued pursuant to a group life insurance policy for compensation or anything of value less than the expected death benefit payable under the policy.

e. A purchaser of a life settlement.

f. Any authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a provider, purchaser, financing entity, special purpose entity, or related provider trust.

g. A financing entity.

h. A special purpose entity.

i. A related provider trust.

j. A broker.

k. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as amended, who purchases a life settlement policy from a life settlement provider."

SECTION 2. The title of Article 58 of Chapter 58 of the General Statutes reads as rewritten:

"Article 58.

~~Life Insurance and Viatical Settlements.~~

Life Insurance, Viatical Settlements, and Life Settlements."

SECTION 3. This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 1489 (Second Edition)

SHORT TITLE: Protect Consumers/Life Settlement Transaction.

SPONSOR(S): Representative Holliman

	FISCAL IMPACT				
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
EXPENDITURES:	\$0	\$0	\$0	\$0	\$0
POSITIONS (cumulative):	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance.					
EFFECTIVE DATE: October 1, 2007.					

BILL SUMMARY: This bill adds a new definitions section of proposed Part 6 of Article 58, G.S. Chapter 58, concerning life settlement transactions, and adds Life Settlements to the title of Article 58 of G.S. Chapter 58.

Source: Bill Digest H.B. 1489 (04/16/0200).

ASSUMPTIONS AND METHODOLOGY: As this bill adds nothing more than routine duties and responsibilities to those which the Department of Insurance already undertakes, there is no fiscal impact associated with this legislation.

SOURCES OF DATA: Department of Insurance.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

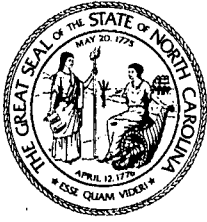
PREPARED BY: Brian Reynolds and Doug Holbrook.

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: July 23, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices



HOUSE BILL 1489: Protect Consumers/Life Settlement Transaction

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 25, 2007
Introduced by:	Rep. Holliman	Summary by:	Tim Hovis
Version:	PCS to Second Edition H1489-CSRG-63[v.3]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1489 makes various changes to Part 5, Viatical Settlements, of Article 58, Life Insurance and Viatical Settlements, of Chapter 58 of the General Statutes governing viatical settlements. A "viatical settlement" is the payment of compensation for the benefits of a life insurance policy in return for the policy owner's (a viator) assignment, sale, devise, bequest or transfer of the death benefit or ownership of the policy.*

The PCS for H1489 makes changes to existing law to conform to certain provisions of the model act of the National Association of Insurance Commissioners.

BILL ANALYSIS:

Section 1 of the bill amends **G.S. 58-58-205, Definitions**, including the following:

- Adds to the definition of a "fraudulent viatical settlement act;" (1) recklessly entering into, negotiating, brokering a contract, the subject of which is a life insurance policy obtained by false information or concealing any material fact by the viator or the viator's agent with the intent to defraud the policy's issuer, viatical settlement provider or the viator or (2) facilitating a change in the state of ownership or of residency to a state that does not have a similar law to evade the act.
- Provides that a "viatical settlement contract" includes a premium finance loan made for a life insurance policy to a viator where the viator receives on the date of the loan a guarantee of a future viatical settlement value or agrees on the date of the loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. Also lists those loans and agreements which are not a viatical settlement contract.
- Adds a definition of "viatical settlement investment agent" to mean a person who is an appointed or contracted agent of a viatical settlement provider who solicits or arranges funding for the purchase of a settlement by a purchaser on behalf of a provider.
- Definition of "viatical settlement provider" is amended to mean a person who effectuates a contract with a viator in this State or residents of another state from offices in this State. This definition is also amended to provide that a viatical settlement provider does not include a premium finance company making premium finance loans, exempted by the Commissioner from licensing under premium finance laws, that takes a policy assignment solely as collateral for a loan. Finally, an exemption is added for any person that the Commissioner determines is not the type to be covered by the definition of viatical settlement provider.
- Clarifies in the definition of "viator" that he or she must reside in this State or, if there is more than one viator on a policy, the transaction is governed by the state in which the viator having the largest percentage ownership resides. If the percentages are equal, the state of residence of one viator agreed upon in writing by all viators controls.

House Bill 1489

Page 2

Section 2 amends G.S. 58-58-255, Prohibited practices, to provide that it is a violation to enter into a contract at any time before the application or issuance of a policy that is the subject of a viatical settlement contract or within 5 years after the policy's issuance (was 2 years). The bill deletes from the provisions of this section exemptions for viators who certify within the five-year period that they are charitable organizations or are not natural persons.

Section 2 adds language exempting viators who submit evidence within the five-year period that a final order, judgment, or decree has been entered on the application of a viator's creditor adjudicating the viator bankrupt. This section also exempts viators entering into contracts **more than two years** after policy issuance if: (1) policy premiums have been funded exclusively with unencumbered assets; (2) there is no agreement with any person to guarantee liability or to purchase or stand ready to purchase; the policy; and (3) neither the policy nor the insured has been evaluated for settlement.

Section 2 requires an insurer to respond in writing within 30 calendar days of a properly completed request for change of ownership or of policy beneficiary with a written acknowledgement of the change or specifying why the change cannot be processed.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 1489 becomes effective October 1, 2007.

H1489e2-SMRG-CSRG-63v3

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 1489
Committee Substitute Favorable 5/23/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1489-CSRG-63 [v.3]

7/25/2007 6:29:05 PM

Short Title: Protect Consumers/Life Settlement Transaction.

(Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED
AN ACT AMEND NORTH CAROLINA'S LAW ON VIATICAL SETTLEMENTS TO
MAKE IT CONFORM TO CERTAIN PROVISIONS OF THE VIATICAL
SETTLEMENTS MODEL ACT PROMULGATED BY THE NATIONAL
ASSOCIATION OF INSURANCE COMMISSIONERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-58-205 is amended to read:

"§ 58-58-205. Definitions.

As used in this Article: Part:

...

(5) "Fraudulent viatical settlement act" includes:

a. Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:

1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, viator, insured or any other person false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

I. An application for the issuance of a viatical settlement contract or insurance policy.

II. The underwriting of a viatical settlement contract or insurance policy.

- III. A claim for payment or benefit under a viatical settlement contract or insurance policy.
 - IV. Premiums paid on an insurance policy.
 - V. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy.
 - VI. The reinstatement or conversion of an insurance policy.
 - VII. The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy.
 - VIII. The issuance of written evidence of viatical settlement contract or insurance.
 - IX. A financing transaction.
2. Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies.
- b. In the furtherance of a fraud or to prevent the detection of a fraud, any person commits or permits the person's employees or agents to:
1. Remove, conceal, alter, destroy, or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 3. Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or
 4. File with the Commissioner or the insurance regulator of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the Commissioner.
- c. Embezzlement, theft, misappropriation, or conversion of monies, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner, or any other person engaged in the business of viatical settlements or insurance; or
- c1. Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator person or the viator's agent persons intended to defraud the policy's issuer, the viatical settlement provider or the viator.

- 1 “Recklessly” means engaging in the conduct in conscious and
2 clearly unjustifiable disregard of a substantial likelihood of the
3 existence of the relevant facts or risks. such disregard involving
4 a gross deviation from acceptable standards of conduct; or
5 c2. Facilitating the change of state of ownership of a policy or
6 certificate or the state of residency of a viator to a state or
7 jurisdiction that does not have a law similar to this Part for the
8 express purposes of evading or avoiding the provisions of this
9 Part; or
10 d. Attempting to commit, assisting, aiding, or abetting in the
11 commission of, or conspiracy to commit, the acts or omissions
12 specified in this subdivision.
13 ...
14 (11) “Viatical settlement contract” means means:
15 a. aA written agreement between a viator and a viatical settlement
16 provider or any affiliate of the viatical settlement provider
17 establishing the terms under which compensation or anything of
18 value is or will be paid, which compensation or value is less
19 than the expected death benefit benefits of the policy, in return
20 for the viator’s present or future assignment, transfer, sale,
21 devise, or bequest of the death benefit or ownership of any
22 portion of the policy- policy or certificate of insurance;
23 b. “Viatical settlement contract” includes a premium finance loan
24 made for a life insurance policy by a lender to viator on, before
25 or after the date of issuance of the policy where:
26 1. The viator or the insured receives on the date of the
27 premium finance loan a guarantee of a future viatical
28 settlement value of the policy; or
29 2. The viator or the insured agrees on the date of the
30 premium finance loan to sell the policy or any portion of
31 its death benefit on any date following the issuance of
32 the policy.
33 c. “Viatical settlement contract” does not include:
34 1. A policy loan or accelerated death benefit made by the insurer
35 pursuant to the policy’s terms;
36 2. Loan proceeds that are used solely to pay:
37 I. Premiums for the policy;
38 II. The costs of the loan, including, without limitation,
39 interest, arrangement fees, utilization fees and similar
40 fees, closing costs, legal fees and expenses, trustee fees
41 and expenses, and third party collateral provider fees and
42 expenses, including fees payable to letter of credit
43 issuers;

- 1 III. A loan made by a bank or other licensed financial
2 institution in which the lender takes an interest in a life
3 insurance policy solely to secure repayment of a loan or,
4 if there is a default on the loan and the policy is
5 transferred, the transfer of such a policy by the lender,
6 provided that the default itself is not pursuant to an
7 agreement or understanding with any other person for
8 the purpose of evading regulation under this Part;
- 9 IV. A loan made by a lender that does not violate Article 35
10 of this Chapter, provided that the premium finance loan
11 is not described in sub-subdivision b of this subdivision;
- 12 V. An agreement where all the parties (i) are closely related
13 to the insured by blood or law or (ii) have a lawful
14 substantial economic interest in the continued life,
15 health, and bodily safety of the person insured, or are
16 trusts established primarily for the benefit of such
17 parties;
- 18 VI. Any designation, consent, or agreement by an insured
19 who is an employee of an employer in connection with
20 the purchase by the employer, or trust established by the
21 employer, of life insurance on the life of the employee;
- 22 VII. A bona fide business succession planning arrangement:
23 A. Between one or more shareholders in a
24 corporation or between a corporation and one or
25 more of its shareholders or one or more trust
26 established by its shareholders;
27 B. Between one or more partners in a partnership or
28 between a partnership and one or more of its G.S.
29 partners or one or more trust established by its
30 partners; or
31 C. Between one or more members in a limited
32 liability company or between a limited liability
33 company and one or more of its members or one
34 or more trust established by its members;
- 35 VIII. An agreement entered into by a service recipient, or a
36 trust established by the service recipient, and a service
37 provider, or a trust established by the service provider,
38 who performs significant services for the service
39 recipient's trade or business; or
- 40 IX. Any other contract, transaction, or arrangement
41 exempted from the definition of viatical settlement
42 contract by the Commissioner based on a determination
43 that the contract, transaction, or arrangement is not of the
44 type intended to be regulated by this Part.

~~A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by a policy, other than a loan by a life insurance company under the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.~~

- (12) "Viatical settlement provider" or "provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this State or residents of another state from offices within this State.

Viatical settlement provider does not include:

- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;
- al. A premium finance company making premium finance loans and exempted by the Commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan;
- b. ~~The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract; policy;~~
- c. An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- e. A financing entity;
- f. A special purpose entity;
- g. A related provider trust;
- h. A viatical settlement purchaser; or
- i. ~~An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider. Any other person that the Commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.~~

...

(16) "Viator" means the owner of a policy or a certificate holder under a group policy who resides in this State and enters or seeks to enter into a viatical settlement contract. For the purposes of this Part, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

"Viator" does not include:

- a. A licensee under this Part including a life insurance producer acting as a viatical settlement broker pursuant to this Part;
- b. ~~An accredited investor or~~ A qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of promulgated under the Federal Securities Act of 1933, as amended;
- c. A financing entity;
- d. A special purpose entity; or
- e. A related provider trust."

SECTION 2. G.S. 58-58-255 reads as rewritten:

"§ 58-58-255. Prohibited practices.

(a) It is a violation of this Part for any person to enter into a contract at any time before the application or issuance of a policy that is the subject of viatical settlement contract or within a two-year five-year period commencing with the date of issuance of the insurance policy unless the viator certifies to the provider that one or more of the following conditions have been met within the two-year five-year period:

- (1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total time covered under the conversion policy plus the time covered under the prior policy is at least 24 months, or the contestability and suicide time periods have been waived by the insurer. 60 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.
- (2) ~~The viator is a charitable organization exempt from taxation under 26 U.S.C. § 501(c)(3).~~
- (3) ~~The viator is not a natural person (e.g., the owner is a corporation, limited liability company, partnership, etc.).~~
- (4) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year five-year period:

- a. The viator or insured is terminally or chronically ill.
 - b. The viator's spouse dies.
 - c. The viator divorces his or her spouse.
 - d. The viator retires from full-time employment.
 - e. The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment.
 - f. The viator was the insured's employer at the time the policy was issued and the employment relationship terminated.
 - g. A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.
 - h. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium.
 - i. The viator or insured disposes of his or her ownership interests in a closely held corporation.
 - j. A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets.
- (5) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times before the date that is two years after policy issuance, the following conditions are met:
- a. Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in G.S. 58-58-205(13)(c)(5).
 - b. There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
 - c. Neither the insured nor the policy has been evaluated for settlement.

(b) Copies of the independent evidence described in subdivision (a)(4) of this section and documents required by G.S. 58-58-250(a) shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement

1 contract with a viator submits a request to the insurer for verification of coverage. The
2 copies shall be accompanied by a letter of attestation from the provider that the copies
3 are true and correct copies of the documents received by the provider.

4 (c) If the viatical settlement provider submits to the insurer a copy of the owner
5 or insured's certification described in subdivision (a)(4) and the independent evidence
6 required by subsection (b) of this section when the provider submits a request to the
7 insurer to effect the transfer of the policy to the provider, the copy shall be deemed to
8 conclusively establish that the contract satisfies the requirements of this section, and the
9 insurer shall timely respond to the request.

10 (d) No insurer may, as a condition of responding to a request for verification of
11 coverage or effecting the transfer of a policy pursuant to a viatical settlement contract,
12 require that the viator, insured, viatical settlement provider, or viatical settlement broker
13 sign any forms, disclosures, consent, or waiver form that has not been expressly
14 approved by the Commissioner for use in connection with viatical settlement contracts
15 in this State.

16 (e) Upon receipt of a properly completed request for change of ownership or
17 beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with
18 written acknowledgement confirming that the change has been effected or specifying
19 the reasons why the requested change cannot be processed. The insurer shall not
20 unreasonably delay effecting change of ownership or beneficiary and shall not
21 otherwise seek to interfere with any viatical settlement contract lawfully entered into in
22 this State."

23 **SECTION 3.** This act becomes effective October 1, 2007.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1489

DATE 7/24/07

S. B. No. _____

Amendment No. 1

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE H1489-LSRG-61 [v. 5]

(technical amendment)

Rep.) Stevens
Sen.) _____

1 moves to amend the bill on page 11, line s 31-34

2 () WHICH CHANGES THE TITLE

3 by rewriting the lines to read:

4 _____

5 "(10) The viatical settlement broker or life

6 insurance producer operating as a viatical

7 settlement broker has violated the provisions

8 of this Part or has otherwise "

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED _____

Robert M. Stevens

ADOPTED X

FAILED _____

TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1489

DATE 7/24/07

S. B. No. _____

Amendment No. #2

COMMITTEE SUBSTITUTE H1489-CSRB-61 [v.5]

(to be filled in by
Principal Clerk)

Rep.) STEVENS

Sen.)

1 moves to amend the bill on page 30, line 5 36-37

2 () WHICH CHANGES THE TITLE

3 by rewriting the lines to read:

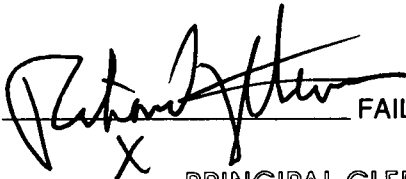
4
5 "(d) If the beneficiary, assignee, or other payee
6 under any contract of insurance made in violation
7 of this section receives from the insurer any
8 benefits under the contract of insurance accruing
9 upon the death, disablement, or injury of the
10 person insured, the person insured or his executor
11 or administrator may maintain an action to
12 recover those benefits from the person receiving
13 them. or Chapter 78A

14 (e) If there is any conflict between this section and
15 Part 5 of this Article, then Part 5 of this Article or
16 Chapter 78A, ~~as applicable~~, as applicable, controls.

17 (f) If there is any conflict between this section
18 and G.S. 58-58-75, 58-58-80, 58-58-85, 58-58-86
19 or 58-58-90, then G.S. 58-58-75, 58-58-80, 58-58-
85, 58-58-86 or 58-58-90 controls."

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. 1489

DATE 7/24/07

S. B. No. _____

Amendment No. #2

COMMITTEE SUBSTITUTE H 1489 - CSRG - 61 [v. 5]

(to be filled in by
Principal Clerk)

Rep.) STEVENS

Sen.)

1 moves to amend the bill on page 30, line s 27-29

2 () WHICH CHANGES THE TITLE

3 by rewriting those lines to read:

4 "contract of insurance upon his or her own
5 ~~transfer~~ person for the benefit of any person." j

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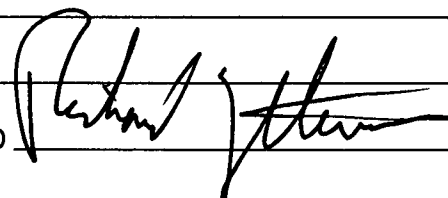
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ADOPTED X FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee

Name of Committee

07/24/07

07/17/07

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Robert S. Clark	R. Clark Assoc.
Ann Christian	Atty
Paola Ribadeneyra	NCAVB
Michael Freedman	Coventry
W.R. Mann	11
Robert Raschel	Young, Moore
Henry Jones	Gordon Price
Sharon Stroud	SED
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
Conroy A. Cowles	Capitol
Harold H. Webb	Wake Co.

VISITOR REGISTRATION SHEET

Senate Commerce, Small Business & Entrepreneurship Committee

Name of Committee

07/24/07

07/17/07

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE

ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Christine Wunsche	106-Daily Bulletin
Lisa Martin	NC Home Builders
Larry Heckner	HSBC - NA
CASANDRA WHITE	Gov. Office
Paul Harris	NC Board of Funeral Service
CURT LEONARD	A.C.L.I.
Anteogn	NMRS

Senate Commerce, Small Business and Entrepreneurship Committee
Thursday, July 26, 2007, 11:00 AM to 1:00 PM
1027

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1435	Amend Funeral Serv. Prac./Other Related Laws.	Senator Atwater
HB 89	Wheel Locks/Boiling Springs.	Representative Clary Representative Moore
HB 802	Contract Power/Department of Transportation.-AB	Representative Dickson
HB 1685	Adlt Care Home or Nursing Home/Expedited Con.	Representative Lewis
HB 1786	Req. Liability Insurance/Toughman Matches.	Representative Bordsen Representative Love, Sr.
HB 1817	Protect Consumers - Covered Loans.	Representative Blue

Presentations

Other Business

Adjournment

SENATE COMMERCE COMMITTEE

Thursday, July 26, 2007

Room 1027, Legislative Building

MINUTES

The Senate Commerce Committee met at 11:00 a.m. on July 26, 2007, in Room 1027 of the Legislative Building. Sixteen members of the Committee were present. Pages assisting with the meeting were Carlton Bass, Raleigh, sponsored by Senator Dorsett; and Franklin Dunn, Asheboro, sponsored by Senator Purcell. Senator R. C. Soles, Jr., Chairman, presided.

Senator Soles recognized Senator Blake who moved for adoption of the Senate Committee Substitute bill for S. B. 1435, Amend Funeral Serv. Prac./Other Related Laws for discussion purposes. Motion carried. He then recognized Senator Atwater to explain the bill. Speaking in favor of the bill was Mr. Jack Nichols, representing the North Carolina Board of Funeral Services. Senator McKissick moved for a favorable report for the Committee Substitute bill. The motion carried, and Senator Soles re-referred the bill to the Finance Committee.

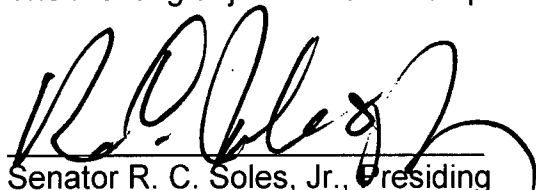
Senator Soles recognized Representative Dickson to explain H.B. 802, Contract Power/Department of Transportation-A.B. Mr. Don Laymon, of the North Carolina Department of Transportation was present to answer questions from the members. Senator Dorsett moved for a favorable report of the bill. Motion carried.

Senator Soles then recognized Representative Blue to explain H.B. 1817, Protect Consumers – Covered Loans. Senator Blake moved for adoption of the Senate Committee Substitute bill for discussion purposes. Speaking on the bill were Chris Kukla, representing the Center for Responsible Lending, and Dick Carlton, representing North Carolina Financial Services Association. Senator Nesbitt offered Amendment No. 1 and moved for its adoption. Motion carried. Senator Kerr moved for a favorable report of the Senate Committee Substitute bill, as amended. Motion carried.

Senator Soles recognized Representative Lewis and Tim Hovis, of the Fiscal Research Division, to explain the Senate Committee Substitute for H.B. 1685, Adlt. Care Home or Nursing Home, Expedited CON. Senator Blake moved for adoption of the Senate Committee Substitute bill. Motion carried.

Senator Soles announced that H.B. 1786, Req. Liability Insurance/Toughman Matches, would be withdrawn from today's calendar.

The meeting adjourned at 12:05 p.m.



Senator R. C. Soles, Jr., Presiding



Mona Fitzgerald, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Friday, July 27, 2007

Senator ,
submits the following with recommendations as to passage:

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

S.B.	1435	Amend Funeral Serv. Prac./Other Related Laws.
		Draft Number: PCS75450
		Sequential Referral: None
		Recommended Referral: Finance
		Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1435

Short Title: Amend Funeral Serv. Prac./Other Related Laws.

(Public)

Sponsors: Senator Atwater.

Referred to: Commerce, Small Business and Entrepreneurship.

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS PERTAINING TO THE PRACTICE OF
3 FUNERAL SERVICE, MUTUAL BURIAL ASSOCIATIONS, PRENEED
4 FUNERAL FUNDS, AND CREMATIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 90-210.18A reads as rewritten:

7 "§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies;
8 removal.

9 (a) The General Assembly declares that the practice of funeral service affects the
10 public health, safety, and welfare and is subject to regulation and control in the public
11 interest. The public interest requires that only qualified persons be permitted to practice
12 funeral service in North Carolina and that the profession merit the confidence of the
13 public. This Article shall be liberally construed to accomplish these ends.

14 (b) The North Carolina Board of Funeral Service is created and shall regulate the
15 practice of funeral service in this State. The Board shall have nine members as follows:

16 (1) Four members appointed by the Governor from nominees
17 recommended by the North Carolina Funeral Directors Association,
18 Inc. These members shall be persons licensed under this Article.

19 (2) Two members appointed by the Governor from nominees
20 recommended by the Funeral Directors & Morticians Association of
21 North Carolina, Inc. These members shall be persons licensed under
22 this Article.

23 (3) One member appointed by the Governor who is licensed under this
24 Article and who is not affiliated with any funeral service trade
25 association.

26 (4) One member appointed by the General Assembly, upon the
27 recommendation of the President Pro Tempore of the Senate. This
28 member shall be a person who is not licensed under this Article or
29 employed by a person who is licensed under this Article.

- (5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on ~~June 30~~December 1 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 2. G.S. 90-210.20 reads as rewritten:

"§ 90-210.20. Definitions.

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio, television station, or electronic medium.

(b) "Board" means the North Carolina Board of Funeral Service.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(cl) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of a dead human body. Embalming shall not include the washing or use of soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices; provided, that no dead human body shall be handled in a manner inconsistent with G.S. 130A-395.

(el) ~~"Funeral chapel"~~ "Chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment ~~or other licensee~~ under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in

1 which or on the premises of which there is not displayed any caskets or other funeral
2 merchandise; in which or on the premises of which there is not located any preparation
3 room; and which no owner, operator, employee, or agent thereof represents the chapel
4 to be a funeral establishment.

5 (f) "Funeral directing" means engaging in the practice of funeral service except
6 embalming.

7 (g) "Funeral director" means any person engaged in the practice of funeral
8 directing.

9 (h) "Funeral establishment" means every place or premises devoted to or used in
10 the care, arrangement and preparation for the funeral and final disposition of dead
11 human bodies and maintained for the convenience of the public in connection with dead
12 human bodies or as the place for carrying on the ~~profession-practice~~ of funeral service.

13 (i) "Funeral service licensee" means a person who is duly licensed and engaged
14 in the practice of funeral service.

15 (j) "Funeral service" means the aggregate of all funeral service licensees and
16 their duties and responsibilities in connection with the funeral as an organized,
17 purposeful, time-limited, flexible, group-centered response to death.

18 (k) "Practice of funeral service" means engaging in the care or disposition of
19 dead human bodies or in the practice of disinfecting and preparing by embalming or
20 otherwise dead human bodies for the funeral service, transportation, burial or cremation,
21 or in the practice of funeral directing or embalming as presently known, whether under
22 these titles or designations or otherwise. "Practice of funeral service" also means
23 engaging in making arrangements for funeral ~~service~~, service or cremation, selling
24 funeral supplies to the public or making financial arrangements for the rendering of
25 such services or the sale of such supplies.

26 (l) "Resident trainee" means a person who is engaged in preparing to become
27 licensed for the practice of funeral directing, embalming or funeral service under the
28 personal supervision and instruction of a person duly licensed for the practice of funeral
29 directing, embalming or funeral service in the State of North Carolina under the
30 provisions of this Chapter, and who is duly registered as a resident trainee with the
31 Board."

32 **SECTION 3. G.S. 90-210.23 reads as rewritten:**

33 **"§ 90-210.23. Powers and duties of the Board.**

34 (a) The Board is authorized to adopt and promulgate such rules and regulations
35 for transaction of its business and for the carrying out and enforcement of the provisions
36 of this Article as may be necessary and as are consistent with the laws of this State and
37 of the United States.

38 (b) The Board shall elect from its members a president, a vice-president and a
39 secretary, no two offices to be held by the same person. The president and
40 vice-president and secretary shall serve for one year and until their successors shall be
41 elected and qualified. The Board shall have authority to engage adequate staff as
42 deemed necessary to perform its duties.

43 (c) The members of the Board shall serve without compensation provided that
44 such members shall be reimbursed for their necessary traveling expenses and the

1 necessary expenses incident to their attendance upon the business of the Board, and in
2 addition thereto they shall receive per diem and expense reimbursement as provided in
3 G.S. 93B-5 for every day actually spent by such member upon the business of the
4 Board. All expenses, salaries and per diem provided for in this Article shall be paid
5 from funds received under the provisions of this Article and shall in no manner be an
6 expense to the State.

7 (d) Every person licensed by the Board and every resident trainee shall furnish all
8 information required by the Board reasonably relevant to the practice of the profession
9 or business for which the person is a licensee or resident trainee. Every funeral service
10 establishment and its records and every place of business where the practice of funeral
11 service or embalming is carried on and its records shall be subject to inspection by the
12 Board during normal hours of operation and periods shortly before or after normal hours
13 of operation and shall furnish all information required by the Board reasonably relevant
14 to the business therein conducted. Every licensee, resident trainee, embalming facility,
15 and funeral service establishment shall provide the Board with a current post-office
16 address which shall be placed on the appropriate register and all notices required by law
17 or by any rule or regulation of the Board to be mailed to any licensee, resident trainee,
18 embalming facility, or funeral service establishment shall be validly given when mailed
19 to the address so provided.

20 (d1) The Board is empowered to hold hearings in accordance with the provisions
21 of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or
22 receive the affirmation of witnesses before the Board.

23 In any show cause hearing before the Board held under the authority of Chapter
24 150B of the General Statutes where the Board imposes discipline against a licensee, the
25 Board may recover the costs, other than attorneys' fees, of holding the hearing against
26 all respondents jointly, not to exceed five thousand dollars (\$5,000).

27 (e) The Board is empowered to regulate and inspect, according to law, funeral
28 service establishments and embalming facilities, their operation, and the licenses under
29 which they are operated, and to enforce as provided by law the rules, regulations, and
30 requirements of the Division of Health Services and of the city, town, or county in
31 which the funeral service establishment or embalming facility is maintained and
32 operated. Any funeral establishment or embalming facility that, upon inspection, is
33 found not to meet all of the requirements of this Article shall pay a reinspection fee to
34 the Board for each additional inspection that is made to ascertain that the deficiency or
35 other violation has been corrected. The Board is also empowered to enforce compliance
36 with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as
37 amended from time to time.

38 (f) The Board may establish, supervise, regulate and control programs for the
39 resident trainee. It may approve schools of mortuary science or funeral service,
40 graduation from which is required by this Article as a qualification for the granting of
41 any license, and may establish essential requirements and standards for such approval of
42 mortuary science or funeral service schools.

43 (g) Schools for teaching mortuary science which are approved by the Board shall
44 have extended to them the same privileges as to the use of bodies for dissecting while

1 teaching as those granted in this State to medical colleges, but such bodies shall be
2 obtained through the same agencies which provide bodies for medical colleges.

3 (h) The Board shall adopt a common seal.

4 (h1) The Board shall have the power to acquire, hold, rent, encumber, alienate,
5 and otherwise deal with real property in the same manner as a private person or
6 corporation, subject only to approval of the Governor and the Council of State.
7 Collateral pledged by the Board for an encumbrance is limited to the assets, income, and
8 revenues of the Board.

9 (h2) The Board may employ legal counsel and clerical and technical assistance,
10 and fix the compensation therefor, and incur such other expenses as may be deemed
11 necessary in the performance of its duties and the enforcement of the provisions of this
12 Article or as otherwise required by law and as may be necessary to carry out the powers
13 herein conferred.

14 (i) The Board may perform such other acts and exercise such other powers and
15 duties as may be provided elsewhere in this Article or otherwise by law and as may be
16 necessary to carry out the powers herein conferred."

17 **SECTION 4.** G.S. 90-210.25 reads as rewritten:

18 **"§ 90-210.25. Licensing.**

19 (a) Qualifications, Examinations, Resident Traineeship and Licensure. –

20 (1) To be licensed for the practice of funeral directing under this Article, a
21 person must:

22 a. Be at least 18 years of age.

23 b. Be of good moral character.

24 c. Be a graduate of a Funeral Director Program at a mortuary
25 science college approved by the Board or a school of mortuary
26 science accredited by the American Board of Funeral Service
27 Education. Have completed a minimum of 32 semester hours or
28 48 quarter hours of instruction, including the subjects set out in
29 sub-part e.1. of this subdivision, as prescribed by a mortuary
30 science college approved by the Board or a school of mortuary
31 science accredited by the American Board of Funeral Service
32 Education.

33 d. Have completed 12 months of resident traineeship as a funeral
34 director, pursuant to the procedures and conditions set out in
35 G.S. 90-210.25(a)(4), either before or after satisfying the
36 educational requirement under sub-subdivision c. of this
37 subdivision.

38 e. Have passed an oral or written funeral director examination on
39 the following subjects:

40 1. Psychology, sociology, pathology, funeral directing,
41 business law, funeral law, funeral management, and
42 accounting.

43 2. Repealed by Session Laws 1997-399, s. 5.

- 1 3. Laws of North Carolina and rules of the Board and other
2 agencies dealing with the care, transportation and
3 disposition of dead human bodies.
- 4 (2) To be licensed for the practice of embalming under this Article, a
5 person must:
- 6 a. Be at least 18 years of age.
7 b. Be of good moral character.
8 c. Be a graduate of a mortuary science college approved by the
9 Board.
10 d. Have completed 12 months of resident traineeship as an
11 embalmer pursuant to the procedures and conditions set out in
12 G.S. 90-210.25(a)(4), either before or after satisfying the
13 educational requirement under sub-subdivision c. of this
14 subdivision.
15 e. Have passed an oral or written embalmer examination on the
16 following subjects:
17 1. Embalming, restorative arts, chemistry, pathology,
18 microbiology, and anatomy.
19 2. Repealed by Session Laws 1997-399, s. 6.
20 3. Laws of North Carolina and rules of the Board and other
21 agencies dealing with the care, transportation and
22 disposition of dead human bodies.
- 23 (3) To be licensed for the practice of funeral service under this Article, a
24 person must:
- 25 a. Be at least 18 years of age.
26 b. Be of good moral character.
27 c. Be a graduate of and receive an associate degree from a
28 mortuary science college approved by the Board or a school of
29 mortuary science accredited by the American Board of Funeral
30 Service Education. Have completed a minimum of 60 semester
31 hours or 90 quarter hours of instruction, including the subjects
32 set out in sub-part e.1. of this subdivision, as prescribed by a
33 mortuary science college approved by the Board or a school of
34 mortuary science accredited by the American Board of Funeral
35 Service Education.
36 d. Have completed 12 months of resident traineeship as a funeral
37 service licensee, pursuant to the procedures and conditions set
38 out in G.S. 90-210.25(a)(4), either before or after satisfying the
39 educational requirement under sub-subdivision c. of this
40 subdivision.
41 e. Have passed an oral or written funeral service examination on
42 the following subjects:
43 1. Psychology, sociology, funeral directing, business law,
44 funeral law, funeral management, and accounting.

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2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
 3. Repealed by Session Laws 1997-399, s. 7.
 4. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.
- b. ~~When~~ Within 30 days of a resident trainee ~~leaves~~ leaving the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.
- c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval.
- d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than two times. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A late fee, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the

12-month period of resident traineeship that shall have been completed more than five years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:

1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
3. That the funeral service trainee has, under supervision, assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the

1 application, and shall register no more than one resident trainee
2 for each additional 100 families served at the funeral
3 establishment during the 12 months immediately preceding the
4 date of the application.

5 (5) The Board by regulation may recognize other examinations that the
6 Board deems equivalent to its own.

7 a. All licenses shall be signed by the president and secretary of the
8 Board and the seal of the Board affixed thereto. All licenses
9 shall be issued, renewed or duplicated for a period not
10 exceeding one year upon payment of the renewal fee, and all
11 licenses, renewals or duplicates thereof shall expire and
12 terminate the thirty-first day of December following the date of
13 their issue unless sooner revoked and canceled; provided, that
14 the date of expiration may be changed by unanimous consent of
15 the Board and upon 90 days' written notice of such change to all
16 persons licensed for the practice of funeral directing,
17 embalming and funeral service in this State.

18 b. The holder of any license issued by the Board who shall fail to
19 renew the same on or before February 1 of the calendar year for
20 which the license is to be renewed shall have forfeited and
21 surrendered the license as of that date. No license forfeited or
22 surrendered pursuant to the preceding sentence shall be
23 reinstated by the Board unless it is shown to the Board that the
24 applicant has, throughout the period of forfeiture, engaged full
25 time in another state of the United States or the District of
26 Columbia in the practice to which his North Carolina license
27 applies and has completed for each such year continuing
28 education substantially equivalent in the opinion of the Board to
29 that required of North Carolina licensees; or has completed in
30 North Carolina a total number of hours of accredited continuing
31 education computed by multiplying five times the number of
32 years of forfeiture; or has passed the North Carolina
33 examination for the forfeited license. No additional resident
34 traineeship shall be required. The applicant shall be required to
35 pay all delinquent annual renewal fees and a reinstatement fee.
36 The Board may waive the provisions of this section for an
37 applicant for a forfeiture which occurred during his service in
38 the armed forces of the United States provided he applies within
39 six months following severance therefrom.

40 c. All licensees now or hereafter licensed in North Carolina shall
41 take continuing education courses in subjects relating to the
42 practice of the profession for which they are licensed, to the end
43 that the benefits of learning and reviewing skills will be utilized
44 and applied to assure proper service to the public.

- 1 d. As a prerequisite to the annual renewal of a license, the licensee
2 must complete, during the year immediately preceding renewal,
3 at least five hours of continuing education courses, of which the
4 Board may require licensees to take up to two hours specified
5 by the Board. All continuing education courses must be
6 approved by the Board prior to enrollment. A licensee who
7 completes more than five hours in a year may carry over a
8 maximum of five hours as a credit to the following year's
9 requirement. A licensee who is issued an initial license on or
10 after July 1 does not have to satisfy the continuing education
11 requirement for that year.
- 12 e. The Board shall not renew a license unless fulfillment of the
13 continuing education requirement has been certified to it on a
14 form provided by the Board, but the Board may waive this
15 requirement for renewal in cases of certified illness or undue
16 hardship or where the licensee lives outside of North Carolina
17 and does not practice in North Carolina, and the Board shall
18 waive the requirement for all licensees who were licensed on or
19 before December 31, 2003, and have been licensed in North
20 Carolina for a continuous period of 25 years or more, for all
21 licensees who are licensed on or after January 1, 2004, who
22 have been licensed for a continuous period of 25 years or more
23 and have attained the age of 60 years, and for all licensees who
24 are, at the time of renewal, members of the General Assembly.
- 25 f. The Board shall cause to be established and offered to the
26 licensees, each calendar year, at least eight hours of continuing
27 education courses. The Board may charge licensees attending
28 these courses a reasonable registration fee in order to meet the
29 expenses thereof and may also meet those expenses from other
30 funds received under the provisions of this Article.
- 31 g. Any person who having been previously licensed by the Board
32 as a funeral director or embalmer prior to July 1, 1975, shall not
33 be required to satisfy the requirements herein for licensure as a
34 funeral service licensee, but shall be entitled to have such
35 license renewed upon making proper application therefor and
36 upon payment of the renewal fee provided by the provisions of
37 this Article. Persons previously licensed by the Board as a
38 funeral director may engage in funeral directing, and persons
39 previously licensed by the Board as an embalmer may engage
40 in embalming. Any person having been previously licensed by
41 the Board as both a funeral director and an embalmer may upon
42 application therefor receive a license as a funeral service
43 licensee.

1 h. The Department of Justice may provide a criminal record check
2 to the Board for a person who has applied for a new or renewal
3 license, or certification through the Board. The Board shall
4 provide to the Department of Justice, along with the request, the
5 fingerprints of the applicant, any additional information
6 required by the Department of Justice, and a form signed by the
7 applicant consenting to the check of the criminal record and to
8 the use of the fingerprints and other identifying information
9 required by the State or national repositories. The applicant's
10 fingerprints shall be forwarded to the State Bureau of
11 Investigation for a search of the State's criminal history record
12 file, and the State Bureau of Investigation shall forward a set of
13 the fingerprints to the Federal Bureau of Investigation for a
14 national criminal history check. The Board shall keep all
15 information pursuant to this subdivision privileged, in
16 accordance with applicable State law and federal guidelines,
17 and the information shall be confidential and shall not be a
18 public record under Chapter 132 of the General Statutes.

19 The Department of Justice may charge each applicant a fee
20 for conducting the checks of criminal history records authorized
21 by this subdivision.

22 (a1) Inactive Licenses. – Any person holding a license issued by the Board for
23 funeral directing, for embalming, or for the practice of funeral service may apply for an
24 inactive license in the same category as the active license held. The inactive license is
25 renewable annually. Continuing education is not required for the renewal of an inactive
26 license. ~~The only activity that a holder of an inactive license may not engage in is to~~
27 ~~vote pursuant to G.S. 90-210.18(e)(2); any activity requiring an active license.~~ The
28 holder of an inactive license may apply for an active license in the same category, and
29 the Board shall issue an active license if the applicant has completed ~~in North Carolina~~ a
30 total number of hours of accredited continuing education equal to five times the number
31 of years the applicant held the inactive license. No application fee is required for the
32 reinstatement of an active license pursuant to this subsection. The holder of an inactive
33 license who returns to active status shall surrender the inactive license to the Board.

34 (a2) In order to engage in the practice of funeral directing or funeral service, such
35 a licensee must own, be employed by, or otherwise be an agent of a licensed funeral
36 establishment; except that such a licensee may practice funeral directing or funeral
37 service if:

38 (1) Employed by a college of mortuary science; or

39 (2) The licensee:

40 a. Maintains all of his or her business records at a location made
41 known to the Board and available for inspection by the Board
42 under the same terms and conditions as the business records of
43 a licensed funeral establishment;

- 1 b. Complies with rules and regulations imposed on funeral
2 establishments and the funeral profession that are designed to
3 protect consumers, to include, but not be limited to, the Federal
4 Trade Commission's laws and rules requiring General Price
5 Lists and Statements of Goods and Services; and
6 c. Pays to the Board the funeral establishment license fee required
7 by law and set by the Board.

8 Nothing in this subdivision shall preclude a licensee from arranging
9 cremations and cremating human remains while employed by a
10 crematory.

11 (b) Persons Licensed under the Laws of Other Jurisdictions. –

12 (1) The Board shall grant licenses to funeral directors, embalmers and
13 funeral service licensees, licensed in other states, territories, the
14 District of Columbia, and foreign countries, when it is shown that the
15 applicant holds a valid license as a funeral director, embalmer or
16 funeral service licensee issued by the other jurisdiction, has
17 demonstrated knowledge of the laws and rules governing the
18 profession in North Carolina and has submitted proof of his good
19 moral character; and either that the applicant has continuously
20 practiced the profession in the other jurisdiction for at least three years
21 immediately preceding his application, or the Board has determined
22 that the licensing requirements for the other jurisdiction are
23 substantially similar to those of North Carolina.

24 (2) The Board shall periodically review the mortuary science licensing
25 requirements of other jurisdictions and shall determine which licensing
26 requirements are substantially similar to the requirements of North
27 Carolina.

28 (3) The Board may issue special permits, to be known as courtesy cards,
29 permitting nonresident funeral directors, embalmers and funeral
30 service licensees to remove bodies from and to arrange and direct
31 funerals and embalm bodies in this State, but these privileges shall not
32 include the right to establish a place of business in or engage generally
33 in the business of funeral directing and embalming in this State.
34 Except for special permits issued by the Board for teaching continuing
35 education programs and for work in connection with disasters, no
36 special permits may be issued to nonresident funeral directors,
37 embalmers, and funeral service licensees from states that do not issue
38 similar courtesy cards to persons licensed in North Carolina pursuant
39 to this Article.

40 (c) Registration, Filing and Transportation. –

41 (1) The holder of any license granted by this State for those within the
42 funeral service profession or renewal thereof provided for in this
43 Article shall cause registration to be filed in the office of the board of
44 health of the county or city in which he practices his profession, or if

- 1 there be no board of health in such county or city, at the office of the
2 clerk of the superior court of such county. All such licenses,
3 certificates, duplicates and renewals thereof shall be displayed in a
4 conspicuous place in the funeral establishment where the holder
5 renders service.
- 6 (2) It shall be unlawful for any railway agent, express agency, baggage
7 master, conductor or other person acting as such, to receive the dead
8 body of any person for shipment or transportation by railway or other
9 public conveyance, to a point outside of this State, unless the body is
10 accompanied by a burial-transit permit.
- 11 (3) The "transportation or removal of a dead human body" shall mean the
12 removal of a dead human body for a fee from the location of the place
13 of death or discovery of death or the transportation of the body to or
14 from a medical facility, funeral establishment or facility, crematory or
15 related holding facility, place of final disposition, or place designated
16 by the Medical Examiner for examination or autopsy of the dead
17 human body.
- 18 (4) Any individual, not otherwise exempt from this subsection, shall apply
19 for and receive a permit from the Board before engaging in the
20 transportation or removal of a dead human body in this State. Unless
21 otherwise exempt from this subsection, no corporation or other
22 business entity shall engage in the transportation or removal of a dead
23 human body unless it has in its employ at least one individual who
24 holds a permit issued under this section. No individual permit holder
25 shall engage in the transportation or removal of a dead human body for
26 more than one person, firm, or corporation without first providing the
27 Board with written notification of the name and physical address of
28 each such employer.
- 29 (5) The following persons shall be exempt from the permit requirements
30 of this section but shall otherwise be subject to subdivision (9) of this
31 subsection and any rules relating to the proper handling, care, removal,
32 or transportation of a dead human body:
- 33 a. Licensees under this Article and their employees.
34 b. Employees of common carriers.
35 c. Except as provided in sub-subdivision (6)c. of this section,
36 employees of the State and its agencies and employees of local
37 governments and their agencies.
38 d. Funeral directors licensed in another state and their employees.
- 39 (6) The following persons shall be exempt from this section:
40 a. Emergency medical technicians, rescue squad workers,
41 volunteer and paid firemen, and law enforcement
42 officers-officers while acting within the scope of their
43 employment.

- b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.
 - c. State and county medical examiners and their investigators.
 - d. Any individual transporting cremated remains.
 - e. Any individual transporting or removing a dead human body of their immediate family or next of kin.
 - f. Any individual who has exhibited special care and concern for the decedent.
 - (7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:
 - a. Be at least 18 years of age.
 - b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.
 - c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.
 - d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.
 - e. Be of good moral character.
 - (8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars (\$125.00). A fee, not to exceed one hundred dollars (\$100.00), in addition to the renewal fee not to exceed seventy-five dollars (\$75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.
 - (9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. No person shall take a photograph or video recording of a dead human body without the

- 1 consent of a member of the deceased's immediate family or next of kin
2 or other authorizing agent.
- 3 (10) The Board may adopt rules under this section including permit
4 application procedures and the proper procedures for the removal,
5 handling, and transportation of dead human bodies. The Board shall
6 consult with the Office of the Chief Medical Examiner before
7 initiating rule making under this section and before adopting any rules
8 pursuant to this section. Nothing in this section prohibits the Office of
9 the Chief Medical Examiner from adopting policies and procedures
10 regarding the removal, transportation, or handling of a dead human
11 body under the jurisdiction of that office that are more stringent than
12 the laws in this section or any rules adopted under this section. Any
13 violation of this section or rules adopted under this section may be
14 punished by the Board by a suspension or revocation of the permit to
15 transport or remove dead human bodies or by a term of probation. The
16 Board may, in lieu of any disciplinary measure, accept a penalty not to
17 exceed five thousand dollars (\$5,000) per violation.
- 18 (11) Each applicant for a permit shall provide the Board with the applicant's
19 home address, name and address of any corporation or business entity
20 employing such individual for the removal or transportation of dead
21 human bodies, and the make, year, model, and license plate number of
22 any vehicle in which a dead human body is transported. A permittee
23 shall provide written notification to the Board of any change in the
24 information required to be provided to the Board by this section or by
25 the application for a permit within 30 days after such change takes
26 place.
- 27 (12) If any person shall engage in or hold himself out as engaging in the
28 business of transportation or removal of a dead human body without
29 first having received a permit under this section, the person shall be
30 guilty of a Class 2 misdemeanor.
- 31 (13) The Board shall have the authority to inspect any place or premises
32 that the business of removing or transporting a dead human body is
33 carried out and shall also have the right of inspection of any vehicle
34 and equipment used by a permittee for the removal or transportation of
35 a dead human body.
- 36 (d) Establishment Permit. –
- 37 (1) No person, firm or corporation shall conduct, maintain, manage or
38 operate a funeral establishment unless a permit for that establishment
39 has been issued by the Board and is conspicuously displayed in the
40 establishment. Each funeral establishment at a specific location shall
41 be deemed to be a separate entity and shall require a separate permit
42 and compliance with the requirements of this Article.
- 43 (2) A permit shall be issued when:

- 1 a. It is shown that the funeral establishment has in charge a
2 person, known as a manager, licensed for the practice of funeral
3 directing or funeral service, who shall not be permitted to
4 manage more than one funeral establishment. The manager
5 shall be charged with overseeing the daily operation of the
6 funeral establishment. If the manager leaves the employment of
7 the funeral establishment and is the only licensee employed
8 who is eligible to serve as manager, the funeral establishment
9 may operate without a manager for a period not to exceed 30
10 days so long as: (i) the funeral establishment retains one or
11 more licensees to perform all services requiring a license under
12 this Article; (ii) the licensees are not practicing under the
13 exception authorized by G.S. 90-210.25(a2) and would
14 otherwise be eligible to serve as manager; and (iii) the funeral
15 establishment registers the name of the licensees with the
16 Board.
- 17 b. The Board receives a list of the names of all part-time and
18 full-time licensees employed by the establishment.
- 19 c. It is shown that the funeral establishment satisfies the
20 requirements of G.S. 90-210.27A.
- 21 d. The Board receives payment of the permit fee.
- 22 (3) Applications for funeral establishment permits shall be made on forms
23 provided by the Board and filed with the Board by the owner, a
24 partner, a member of the limited liability company, or an officer of the
25 corporation by January 1 of each year, and shall be accompanied by
26 the application fee or renewal fee, as the case may be. All permits shall
27 expire on December 31 of each year. If the renewal application and
28 renewal fee are not received in the Board's office on or before
29 February 1, a late renewal fee, in addition to the regular renewal fee,
30 shall be charged.
- 31 (4) The Board may place on probation, refuse to issue or renew, suspend
32 suspend, or revoke a permit when an owner, partner, manager,
33 member, operator, or officer of the funeral establishment violates any
34 provision of this Article or any regulations of the Board, or when any
35 agent or employee of the funeral establishment, with the consent of
36 any person, firm or corporation operating the funeral establishment,
37 violates any of those provisions, rules or regulations. In any case in
38 which the Board is entitled to place a funeral establishment permittee
39 on a term of probation, the Board may also impose a penalty of not
40 more than five thousand dollars (\$5,000) in conjunction with the
41 probation. In any case in which the Board is entitled to suspend,
42 revoke, or refuse to renew a permit, the Board may accept from the
43 funeral establishment permittee an offer to pay a penalty of not more
44 than five thousand dollars (\$5,000). The Board may either accept a

1 penalty or revoke or refuse to renew a license, but not both. Any
2 penalty under this subdivision may be in addition to any penalty
3 assessed against one or more licensed individuals employed by the
4 funeral establishment.

5 (5) Funeral establishment permits are not transferable. A new application
6 for a permit shall be made to the Board within 30 days of a change of
7 ownership of a funeral establishment.

8 (d1) Embalming Outside Establishment. – An embalmer who engages in
9 embalming in a facility other than a funeral establishment or in the residence of the
10 deceased person shall, no later than January 1 of each year, register the facility with the
11 Board on forms provided by the Board.

12 (e) Revocation; Suspension; Compromise; Disclosure. –

13 (1) Whenever the Board finds that an applicant for a license or a person to
14 whom a license has been issued by the Board is guilty of any of the
15 following acts or omissions and the Board also finds that the person
16 has thereby become unfit to practice, the Board may suspend or revoke
17 the license or refuse to issue or renew the license, in accordance with
18 the procedures set out in Chapter 150B of the General Statutes:

19 a. Conviction of a felony or a crime involving fraud or moral
20 turpitude.

21 a1. Denial, suspension, or revocation of an occupational or business
22 license by another jurisdiction.

23 b. Fraud or misrepresentation in obtaining or renewing a license or
24 in the practice of funeral service.

25 c. False or misleading advertising as the holder of a license.

26 d. Solicitation of dead human bodies by the licensee, his agents,
27 assistants, or employees; but this paragraph shall not be
28 construed to prohibit general advertising by the licensee.

29 e. Employment directly or indirectly of any resident trainee agent,
30 assistant or other person, on a part-time or full-time basis, or on
31 commission, for the purpose of calling upon individuals or
32 institutions by whose influence dead human bodies may be
33 turned over to a particular licensee.

34 f. The payment or offer of payment of a commission by the
35 licensee, his agents, assistants or employees for the purpose of
36 securing business except as authorized by Article 13D of this
37 Chapter.

38 g. Gross immorality, including being under the influence of
39 alcohol or drugs while practicing funeral service.

40 h. Aiding or abetting an unlicensed person to perform services
41 under this Article, including the use of a picture or name in
42 connection with advertisements or other written material
43 published or caused to be published by the licensee.

44 i. Failing to treat a dead human body with respect at all times.

- 1 j. Violating or cooperating with others to violate any of the
2 provisions of this ~~Article~~, Article or Articles 13D, 13E, or 13F
3 of Chapter 90 of the General Statutes, any rules and regulations
4 of the Board, or the standards set forth in Funeral Industry
5 Practices, 16 C.F.R. 453 (1984), as amended from time to time.
6 k. Violation of any State law or municipal or county ordinance or
7 regulation affecting the handling, custody, care or transportation
8 of dead human bodies.
9 l. Refusing to surrender promptly the custody of a dead human
10 body or cremated remains upon the express order of the person
11 lawfully entitled to the custody thereof.
12 m. Knowingly making any false statement on a certificate of
13 ~~death~~, death or violating or cooperating with others to violate
14 any provision of Article 4 or 16 of Chapter 130A of the General
15 Statutes or any rules or regulations promulgated under those
16 Articles as amended from time to time.
17 n. Indecent exposure or exhibition of a dead human body while in
18 the custody or control of a licensee.

19 In any case in which the Board is entitled to suspend, revoke or
20 refuse to renew a license, the Board may accept from the licensee an
21 offer to pay a penalty of not more than five thousand dollars (\$5,000).
22 The Board may either accept a penalty or revoke or refuse to renew a
23 license, but not both.

- 24 (2) Where the Board finds that a licensee is guilty of one or more of the
25 acts or omissions listed in subdivision (e)(1) of this section but it is
26 determined by the Board that the licensee has not thereby become unfit
27 to practice, the Board may place the licensee on a term of probation in
28 accordance with the procedures set out in Chapter 150B of the General
29 Statutes. In any case in which the Board is entitled to place a licensee
30 on a term of probation, the Board may also impose a penalty of not
31 more than five thousand dollars (\$5,000) in conjunction with the
32 probation. The Board may also require satisfactory completion of
33 remedial or educational training as a prerequisite to license
34 reinstatement or for completing the term of probation.

35 No person licensed under this Article shall remove or cause to be embalmed a dead
36 human body when he or she has information indicating crime or violence of any sort in
37 connection with the cause of death, nor shall a dead human body be cremated, until
38 permission of the State or county medical examiner has first been obtained. However,
39 nothing in this Article shall be construed to alter the duties and authority now vested in
40 the office of the coroner.

41 No funeral service establishment shall accept a dead human body from any public
42 officer (excluding the State or county medical examiner or his agent), or employee or
43 from the official of any institution, hospital or nursing home, or from a physician or any
44 person having a professional relationship with a decedent, without having first made

1 due inquiry as to the desires of the persons who have the legal authority to direct the
2 disposition of the decedent's body. If any persons are found, their authority and
3 directions shall govern the disposal of the remains of the decedent. Any funeral service
4 establishment receiving the remains in violation of this subsection shall make no charge
5 for any service in connection with the remains prior to delivery of the remains as
6 stipulated by the persons having legal authority to direct the disposition of the body.
7 This section shall not prevent any funeral service establishment from charging and
8 being reimbursed for services rendered in connection with the removal of the remains of
9 any deceased person in case of accidental or violent death, and rendering necessary
10 professional services required until the persons having legal authority to direct the
11 disposition of the body have been notified.

12 When and where a licensee presents a selection of funeral merchandise to the public
13 to be used in connection with the service to be provided by the licensee or an
14 establishment as licensed under this Article, a card or brochure shall be directly
15 associated with each item of merchandise setting forth the price of the service using said
16 merchandise and listing the services and other merchandise included in the price, if any.
17 When there are separate prices for the merchandise and services, such cards or
18 brochures shall indicate the price of the merchandise and of the items separately priced.

19 At the time funeral arrangements are made and prior to the time of rendering the
20 service and providing the merchandise, a funeral director or funeral service licensee
21 shall give or cause to be given to the person or persons making such arrangements a
22 written statement duly signed by a licensee of said funeral establishment showing the
23 price of the service as selected and what services are included therein, the price of each
24 of the supplemental items of services or merchandise requested, and the amounts
25 involved for each of the items for which the funeral establishment will advance moneys
26 as an accommodation to the person making arrangements, insofar as any of the above
27 items can be specified at that time. If fees charged by a finance company for expediting
28 payment of life insurance proceeds to the establishment will be passed on to the person
29 or persons responsible for payment of the funeral expenses, information regarding the
30 fees, including the total dollar amount of the fee, shall be disclosed on the written
31 statement. The statement shall have printed, typed or stamped on the face thereof: "This
32 statement of disclosure is provided under the requirements of North Carolina
33 G.S. 90-210.25(e)." The Board may prescribe other disclosures that a licensee shall
34 give to consumers upon finding that the disclosure is necessary to protect public health,
35 safety, and welfare.

36 (e1) Except as otherwise authorized by law, no licensee under this Article, nor any
37 of the licensee's agents, assistants, or employees, shall accept, solicit, or offer to accept
38 any payment, gratuity, commission, or compensation of any kind in exchange for
39 soliciting or taking human tissue from a dead human body for any person or entity
40 engaging in the recovery of human tissue.

41 (f) Unlawful Practices. – If any person shall practice or hold himself or herself
42 out as practicing the profession or art of embalming, funeral directing or practice of
43 funeral service or operating a funeral establishment without having complied with the

1 ~~licensing~~ provisions of this Article, ~~he~~ the person shall be guilty of a Class 2
2 misdemeanor.

3 (g) Whenever it shall appear to the Board that any person, firm or corporation has
4 violated, threatens to violate or is violating any provisions of this Article, the Board may
5 apply to the courts of the State for a restraining order and injunction to restrain these
6 practices. If upon application the court finds that any provision of this Article is being
7 violated, or a violation is threatened, the court shall issue an order restraining and
8 enjoining the violations, and this relief may be granted regardless of whether criminal
9 prosecution is instituted under the provisions of this subsection. The venue for actions
10 brought under this subsection shall be the superior court of any county in which the acts
11 are alleged to have been committed or in the county where the defendant in the action
12 resides."

13 SECTION 5. G.S. 90-210.27A reads as rewritten:

14 "§ 90-210.27A. Funeral establishments.

15 (a) Every funeral establishment shall contain a preparation room which is strictly
16 private, of suitable size for the embalming of dead bodies. Each preparation room shall:

- 17 (1) Contain one standard type operating table.
- 18 (2) Contain facilities for adequate drainage.
- 19 (3) Contain a sanitary waste receptacle.
- 20 (4) Contain an instrument sterilizer.
- 21 (5) Have wall-to-wall floor covering of tile, concrete, or other material
22 which can be easily cleaned.
- 23 (6) Be kept in sanitary condition and subject to inspection by the Board or
24 its agents at all times.
- 25 (7) Have a placard or sign on the door indicating that the preparation room
26 is private.
- 27 (8) Have a proper ventilation or purification system to maintain a
28 nonhazardous level of airborne contamination.

29 (b) No one is allowed in the preparation room while a dead human body is being
30 prepared except licensees, resident trainees, public officials in the discharge of their
31 duties, members of the medical profession, officials of the funeral home, next of kin, or
32 other legally authorized persons.

33 (c) Every funeral establishment shall contain a reposing room for dead human
34 bodies, of suitable size to accommodate a casket and visitors.

35 (d) Repealed by Session Laws 1997-399, s. 14.

36 (e) If a funeral establishment is solely owned by a natural person, that person
37 must be licensed by the Board as a funeral director or a funeral service licensee. If it is
38 owned by a partnership, at least one partner must be licensed by the Board as a funeral
39 director or a funeral service licensee. If it is owned by a corporation, the president,
40 vice-president, or the chairman of the board of directors must be licensed by the Board
41 as a funeral director or a funeral service licensee. If it is owned by a limited liability
42 company, at least one member must be licensed by the Board as a funeral director or a
43 funeral service licensee. The licensee required by this subsection must be actively
44 engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment ~~or other licensee under this Article~~ shall own, operate, or maintain a funeral chapel without first having registered the name, location, and ownership thereof with the Board; own or maintain more than two funeral chapels, or own or maintain a funeral chapel outside of a radius of 50 miles from the funeral establishment. A duly licensed person may use a funeral chapel for making arrangements for funeral ~~service, services, selling funeral supplies merchandise~~ to the public, public by photograph, video, or computer based presentation, or making financial arrangements for the rendering of ~~such the~~ service or sale of supplies, provided that ~~such the~~ uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board.

(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral establishment, the use of names of deceased individuals, unless the establishment is licensed using the name at the time the new application is made, the use of names of individuals not associated with the establishment, and the use of the word "crematory" or "crematorium" in the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board."

SECTION 6. G.S. 90-210.28 reads as rewritten:

"§ 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit

Application	\$250.00	<u>\$400.00</u>
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Annual renewal	150.00	<u>250.00</u>
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Late renewal	100.00	<u>150.00</u>
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Establishment and embalming facility inspection <u>re-inspection</u> fee	100.00
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Courtesy card

Application	75.00	<u>100.00</u>
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Annual renewal	50.00	<u>75.00</u>
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Out-of-state licensee

Application	200.00	<u>250.00</u>
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Embalmer, funeral director, funeral service

Application-North

1	Carolina-Resident	150.00 200.00
2	-Non-Resident	200.00 250.00
3	Annual Renewal-embalmer or	
4	funeral director	40.00 75.00
5	Total fee, embalmer and funeral director	
6	when both are held by the same person	60.00 100.00
7	-funeral service	60.00 100.00
8	Inactive Status	50.00
9	Reinstatement fee	50.00
10	Resident trainee permit	
11	Application	50.00
12	Voluntary change in supervisor	50.00
13	Annual renewal	35.00
14	Late renewal	25.00
15	Duplicate license certificate	25.00
16	Chapel registration	
17	Application	150.00
18	Annual renewal	100.00
19	Late renewal	75.00

20 The Board shall provide, without charge, one copy of the current statutes and
 21 regulations relating to ~~Mortuary Science~~ Funeral Service to every person applying for
 22 and paying the appropriate fees for licensing pursuant to this Article. The Board may
 23 charge all others requesting copies of the current statutes and regulations, and the
 24 licensees or applicants requesting additional copies, a fee equal to the costs of
 25 production and distribution of the requested documents."

26 **SECTION 7.** Article 13A of Chapter 90 of the General Statutes is amended
 27 by adding a new section to read:

28 **"§ 90-210.29A-1. Examination scores not public record.**

29 The examination scores of applicants for licensure shall not be subject to the
 30 provisions of Chapter 132 of the General Statutes. The Board shall release examination
 31 scores to any person requesting examination scores whether or not the applicant has
 32 obtained a passing score at the time of the request."

33 **SECTION 8.** G.S. 90-210.62 reads as rewritten:

34 **"§ 90-210.62. Types of preneed funeral contracts; forms.**

35 (a) A preneed licensee may offer standard preneed funeral contracts and
 36 inflation-proof preneed funeral contracts. A standard preneed funeral contract applies
 37 the trust funds or insurance proceeds to the purchase price of funeral services and
 38 merchandise at the time of death of the contract beneficiary without a
 39 ~~guarantee~~ protection against potential future price increases. An inflation-proof contract
 40 ~~establishes a fixed price~~ establishes an agreement between the preneed licensee and the purchaser
 41 for funeral services and merchandise without regard to potential future price increases.
 42 Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof
 43 contracts may permit the preneed licensee to retain all of the preneed funeral contract
 44 trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost

1 of goods and services provided, when the preneed licensee has fully performed the
2 preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at
3 the option of the preneed funeral contract purchaser.

4 (b) The Board ~~shall approve all~~ may prescribe forms for preneed funeral
5 ~~contracts. contracts consistent with this Article. All contracts must be in writing, and no~~
6 ~~form shall be used without prior approval of the Board.~~ writing on forms prescribed by
7 the Board. Any use or attempted use of any oral preneed funeral contract or any written
8 contract in a form not ~~approved~~ prescribed by the Board shall be deemed a violation of
9 this Article."

10 **SECTION 9.** Article 13D of Chapter 90 of the General Statutes is amended
11 by adding a new section to read:

12 **"§ 90-210.63A. Amendment of preneed funeral contracts.**

13 (a) Unless otherwise provided by this Article, preneed funeral contracts may be
14 modified by mutual consent of the contracting preneed funeral establishment and the
15 preneed contract purchaser, or after the death of the preneed contract purchaser, the
16 preneed contract beneficiary or his or her legal representative.

17 (b) When the preneed contract purchaser and preneed contract beneficiary are the
18 same, the preneed contract purchaser may designate one or more individuals to change
19 the arrangements or performing funeral establishment, or may designate that the
20 arrangements or performing funeral establishment may not be changed without an order
21 from the clerk of superior court in the county where probate proceedings are instituted
22 upon a finding that the change is in the best interest of the estate.

23 (c) If the preneed purchaser, or after his or her death, the preneed contract
24 beneficiary or his or her legal representative, and the contracting preneed funeral
25 establishment agree to modify any goods or services selected under an inflation-proof
26 contract, the preneed licensee shall not be required to guarantee the price of the
27 modified goods and services at the time of death and all other funeral goods and service
28 selected shall remain guaranteed. If the modifications increase the purchase price, the
29 provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been
30 executed on the original date. If the modifications decrease the purchase price, the
31 preneed licensee shall refund all monies according to the provisions of
32 G.S. 90-210.64(d)."

33 **SECTION 10.** G.S. 90-210.64 reads as rewritten:

34 **"§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

35 (a) After the death of a preneed funeral contract beneficiary and full performance
36 of the preneed funeral contract by the preneed licensee, the preneed licensee shall
37 promptly complete a certificate of performance and present it to the financial institution
38 that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that
39 issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the
40 certificate of performance or similar claim form, the financial institution shall pay the
41 trust funds to the contracting preneed licensee and the insurance company shall pay the
42 insurance proceeds according to the terms of the policy. Within 10 days after receiving
43 payment, the preneed licensee shall mail-file a copy of the certificate of performance or
44 other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral ~~contract~~ contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

- (1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.
- (2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.
- (3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee."

SECTION 11. G.S. 90-210.65(e) reads as rewritten:

"(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may ~~not only~~ be revoked ~~nor or~~ any proceeds refunded ~~except by the order of a court of competent jurisdiction~~ except as follows:

(1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under the laws of state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.

(2) ~~Notwithstanding the previous sentence, irrevocable~~ Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract."

SECTION 12. G.S. 90-210.67(b) reads as rewritten:

"(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than ~~one hundred fifty dollars (\$150.00).~~ four hundred dollars (\$400.00). The Board shall set the amounts of the application fees and renewal fees by rule, but the fees shall not exceed ~~one hundred fifty dollars (\$150.00).~~ four hundred dollars (\$400.00). A funeral establishment receiving a permit after January 1, 2008, or whose license has lapsed or was terminated for any reason after January 1, 2008, shall obtain a surety bond in an amount not less than fifty thousand dollars (\$50,000) for five years, or upon demonstrating that it is solvent, no less than one year from the date the original license is issued. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than ~~one hundred fifty dollars (\$150.00).~~ four hundred dollars (\$400.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee."

SECTION 13. G.S. 90-210.68(d) reads as rewritten:

"(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

Financial institutions that accept preneed funeral trust funds and insurance companies that assign policy proceeds or designate a preneed funeral establishment as

1 beneficiary shall also forward an account balance to the contracting preneed funeral
2 establishment at the end of each calendar year."

3 **SECTION 14.** G.S. 90-210.68(e) reads as rewritten:

4 "(e) In the event that any preneed licensee is unable or unwilling or is for any
5 reason relieved of its responsibility to perform as trustee or to perform any preneed
6 funeral contract, the ~~Board, with the written consent of the purchaser of the preneed~~
7 ~~funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract~~
8 ~~beneficiary~~ Board shall order the contract and any amounts retained pursuant to
9 G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that ~~the~~
10 ~~substitute licensee agrees to accept such assignment, neither the substitute preneed~~
11 ~~licensee or preneed contract purchaser, or after the death of the preneed contract~~
12 ~~purchaser, the preneed contract beneficiary or his or her legal representative, shall be~~
13 ~~obligated to perform the agreement without executing a new preneed funeral contract.~~
14 Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds
15 to revoke an irrevocable preneed funeral contract."

16 **SECTION 15.** G.S. 90-210.69(c) reads as rewritten:

17 "(c) In accordance with the provisions of Chapter 150B of the General Statutes, if
18 the Board finds that a licensee, an applicant for a license or an applicant for license
19 renewal is guilty of one or more of the following, the Board may refuse to issue or
20 renew a license or may suspend or revoke a license or place the holder thereof on
21 probation upon conditions set by the Board, with revocation upon failure to comply with
22 the conditions:

- 23 (1) Offering to engage or engaging in activities for which a license is
24 required under this Article but without having obtained such a license.
- 25 (2) Aiding or abetting an unlicensed person, firm, partnership, association,
26 corporation or other entity to offer to engage or engage in such
27 activities.
- 28 (3) A crime involving fraud or moral turpitude by conviction thereof.
- 29 (4) Fraud or misrepresentation in obtaining or receiving a license or in
30 preneed funeral planning.
- 31 (5) False or misleading advertising.
- 32 (6) Violating or cooperating with others to violate any provision of this
33 Article, the rules and regulations of the Board, or the standards set
34 forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended
35 from time to time.
- 36 (7) Denial, suspension, or revocation of an occupational or business
37 license by another jurisdiction.

38 In any case in which the Board is authorized to take any of the actions permitted
39 under this subsection, the Board may instead accept an offer in compromise of the
40 charges whereby the accused shall pay to the Board a penalty of not more than five
41 thousand dollars (\$5,000). In any case in which the Board is entitled to place a licensee
42 on a term of probation, the Board may also impose a penalty of not more than five
43 thousand dollars (\$5,000) in conjunction with such probation."

44 **SECTION 16.** G.S. 90-210.102 reads as rewritten:

1 **"§ 90-210.102. Hearing by Board of dispute over liability for funeral benefits;**
2 **appeal.**

3 In case of a disagreement between the representative of a deceased member of any
4 burial association and such deceased member's burial association a hearing may be held
5 by the Board of Funeral Service, on request of either party, to determine whether the
6 association is liable for the benefits set forth in the policy issued to the said deceased
7 member of said burial association. The Board of Funeral Service shall render a decision
8 which shall have the same force and effect as judgments rendered by courts of
9 competent jurisdiction in North Carolina. Either party may appeal from the decision of
10 the Board of Funeral Service. Appeal shall be to the district court division of the
11 General Court of Justice in the county in which the burial association is located. The
12 procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of
13 Chapter 7A of the General Statutes of North Carolina regulating appeals from the
14 magistrate to the district court. ~~Upon appeal trial shall be de novo."~~

15 **SECTION 17. G.S. 90-210.107 reads as rewritten:**

16 **"§ 90-210.107. Acquisition, merger, dissolution, and liquidation of mutual burial**
17 **associations.**

18 (a) Any insurance company which desires to purchase the assets of or to merge
19 with a burial association as provided in G.S. 90-210.106 shall submit to the Board of
20 Funeral Service and to the secretary of the association a written proposal containing the
21 terms and conditions of the proposed purchase or merger. A proposal may be
22 conditioned upon an increase in the assessments of an association in the manner set out
23 in subsection (g) of this section. In such a case, the issues of purchase or merger and an
24 increase in assessments may be considered at the same meeting of the association.

25 (b) Upon receipt of a written proposal:

26 (1) The Board shall issue an order directing the association to hold a
27 meeting of the membership within 30 days following receipt of the
28 order for the purpose of voting on the proposal.

29 (2) Within 10 days of receiving the order from the Board, the association
30 shall give at least 10 days' written notice of the meeting to each of its
31 members. The notice shall:

32 a. State the date, time, and place of the meeting.

33 b. State the purpose of the meeting.

34 c. Contain or have attached the proposal submitted by the
35 insurance company.

36 d. Contain a statement limiting the time that each member will be
37 permitted to speak to the proposal, if the association deems it
38 advisable.

39 e. Contain a written proxy form and instructions concerning the
40 proxy prescribed by the Board.

41 (c) A representative of the insurance company shall be permitted to attend the
42 meeting held by the association for the purposes of explaining the proposal and
43 answering any questions from the members. The officers of the association may present
44 their views concerning the proposal. Any member of the association who wishes to

1 speak to the proposal shall be permitted to do so subject to any time limitation stated in
2 the notice of the meeting.

3 (d) The secretary of the association shall record the name of every member who
4 is present at the meeting or has issued a written proxy pursuant to G.S. 55A-7-24 and
5 shall determine whether there is a quorum. The presence of 15 members or ten percent
6 (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance
7 or rejection of the proposal shall be by majority vote of the members ~~present and~~ voting.
8 Any member who is at least 18 years of age shall be permitted to vote. A parent or
9 guardian of any member who is under 18 years of age may vote on behalf of his or her
10 child or ward, but only one vote may be cast on behalf of that member.

11 (e) The secretary of the association shall certify the result of the vote and the
12 presence of a quorum to the Board within five days following the meeting and shall
13 include with the certification a copy of the notice of the meeting that was sent to the
14 members of the association.

15 (f) The Board shall immediately review the certification, the notice, and any
16 other records that may be necessary to determine the adequacy of notice, the presence of
17 a quorum, and the validity of the vote. Upon determining that the meeting and vote were
18 regular and held following proper notice and that a majority of a quorum of the
19 members voted in favor of the proposal, the Board shall issue an order approving the
20 purchase or merger and directing that the purchase or merger proceed in accordance
21 with the proposal.

22 (g) Any burial association whose current assessments are not, or are unlikely to
23 be within the next three years, adequate to reach or maintain a reserve of at least
24 twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements of a
25 proposal from an insurance company to acquire the assets of or to merge with the
26 association may increase its assessments by an amount necessary to reach and maintain
27 the reserve or to meet the proposal. The increase shall be approved by a vote of the
28 members of the association at a regular meeting of the association or at a special
29 meeting called for the purpose of increasing assessments.

30 (1) Any officer or director of the association may call a special meeting
31 for the purpose of increasing assessments, and the secretary shall call a
32 special meeting for such purpose upon the request of at least ten
33 percent (10%) of the members or upon receipt of a proposal from an
34 insurance company that is conditioned upon an increase in
35 assessments.

36 (2) Written notice setting out the date, time, place, and the purpose of the
37 meeting shall be hand delivered or sent by first-class mail, postage
38 prepaid, to the last known address of each member of the association at
39 least 10 days in advance of the meeting.

40 (3) No vote may be had on the question of an increase in assessments
41 unless a quorum of the members of the association is present at the
42 meeting. A quorum shall be conclusively presumed if 15 members or
43 ten percent (10%) of the membership of the association, whichever is
44 greater, is present at the meeting.

- 1 (4) The proposal to increase the assessments shall be approved by an
2 affirmative vote of a majority of the members present and voting.
- 3 (5) The secretary of the association within five days following the meeting
4 shall certify the result of the vote and the presence of a quorum to the
5 Board in the manner and for the purposes set out in subsections (e) and
6 (f) of this section.
- 7 (h) Upon a written request from an association that has held a valid meeting and
8 voted for voluntary dissolution in accordance with G.S. 90-210.81, the Board shall issue
9 an order of liquidation for that association.
- 10 (i) Upon receipt of a request for voluntary dissolution under subsection ~~(h)~~, (h) of
11 this section or if the sponsoring funeral establishment has its permit revoked or ceases
12 operation for any reason, the Board shall issue an order of liquidation. The Board's
13 order may direct that the agreements for members' benefits be transferred to a
14 financially sound mutual burial association, as well as all records, property, and
15 unexpended balances of funds of the association to be liquidated, if the financially
16 sound mutual burial association agrees in writing to accept the transfer. The Board's
17 order shall direct the burial association to complete the liquidation and to file a final
18 report with the Board no later than December 31 of the year of the liquidation. Upon
19 receipt of the order of liquidation, the burial association shall:
- 20 (1) Cease accepting new members.
- 21 (2) Collect all debts owed to the association and pay all debts owed by the
22 association from monies on hand, including the reserve.
- 23 (3) Distribute pro rata any remaining monies on hand and in the reserve
24 among those who were members of the association and whose transfer
25 could not be accomplished on the date that the liquidation order was
26 issued by the Board. Each member's distributive share shall be
27 determined by dividing the amount of the member's benefit by the
28 aggregate benefits of all members of the association and then
29 multiplying the total amount of money available for distribution by the
30 percentage so derived. Assessments owed by the members to the
31 association at the time of distribution shall be taken into account and
32 shall be offset against the members' distributive shares.
- 33 (4) Issue a certificate to members in an amount that equals the difference
34 between the distributive share issued in subdivision (3) of this
35 subsection and the full amount of the member's association benefit.
36 Any certificate issued shall supersede and supplant any other
37 certificate already issued by the association. The certificate shall be on
38 a form prescribed by the Board and shall be prepared and distributed
39 by the association at its expense.
- 40 (5) File a final report with the Board on or before December 31 in the year
41 in which the order of liquidation was issued. This report shall show all
42 receipts and disbursements, including the amount distributed to each
43 member, since the last annual report of the association was filed with
44 the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 90-210.84 are automatically cancelled."

SECTION 18. G.S. 90-210.121(22) is repealed.

SECTION 19. G.S. 90-210.121 is amended by adding the following new subdivisions to read:

"§ 90-210.121. Definitions.

As used in this Article, unless the context requires otherwise:

...

(13a) "Cremation society" means any person, firm, corporation, or organization that is affiliated with a crematory licensed under this Article and provides cremation information to consumers.

...

(17a) "Initial container" means a receptacle for cremated remains, for which the intended use and design is to hold cremated remains, usually composed of cardboard, plastic, or similar material that can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and is a single container of sufficient size to hold the cremated remains.

...."

SECTION 20. G.S. 90-210.122(c) reads as rewritten:

"(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board ~~may~~ shall conduct the election for members of the Crematory Authority ~~simultaneously with the election for members of the Board or at any other time. The Board and~~ shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be

1 declared elected. The Board shall appoint the successors to the two positions for which
2 it makes initial appointments pursuant to this section.

3 The terms of the elected members of the Crematory Authority shall be three years.
4 The terms of the members appointed by the Board, including the members initially
5 appointed pursuant to this subsection, shall be coterminous with their terms on the
6 Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term
7 by majority vote of the remaining members of the Crematory Authority. Any vacancy
8 occurring in a seat appointed by the Governor shall be filled by the Governor. Any
9 vacancy occurring in a seat appointed by the Board shall be filled by the Board."

10 **SECTION 21.** G.S. 90-210.123(g) is amended by adding a new subdivision
11 to read:

12 "(g) Whenever the Board finds that an owner, partner, crematory manager,
13 member, officer, or any crematory technician of a crematory licensee or any applicant to
14 become a crematory licensee, or that any authorized employee, agent, or representative
15 has violated any provision of this Article, or is guilty of any of the following acts, and
16 when the Board also finds that the crematory operator or applicant has thereby become
17 unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license,
18 in accordance with Chapter 150B of the General Statutes:

19 ...

20 (1a) Denial, suspension, or revocation of an occupational or business
21 license by another jurisdiction.

22"

23 **SECTION 22.** G.S. 90-210.123(i) reads as rewritten:

24 "(i) The Board may hold hearings in accordance with the provisions of this
25 Article and Chapter 150B of the General Statutes. The Board shall conduct any such
26 hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of
27 the General Statutes with respect to proceedings initiated pursuant to this Article. The
28 Board is empowered to regulate and inspect crematories and crematory licensees and to
29 enforce as provided by law the provisions of this Article and the rules adopted
30 hereunder. Any crematory that, upon inspection, is found not to meet any of the
31 requirements of this Article shall pay a reinspection fee to the Board for each additional
32 inspection that is made to ascertain whether the deficiency or other violation has been
33 corrected. The Board may obtain preliminary and final injunctions whenever a violation
34 of this Article has occurred or threatens to occur.

35 In addition to the powers enumerated in Chapter 150B of the General Statutes, the
36 Board shall have the power to administer oaths and issue subpoenas requiring the
37 attendance of persons and the production of papers and records before the Board in any
38 hearing, investigation, or proceeding conducted by it. Members of the Board's staff or
39 the sheriff or other appropriate official of any county of this State shall serve all notices,
40 subpoenas, and other papers given to them by the President of the Board for service in
41 the same manner as process issued by any court of record. Any person who neglects or
42 refuses to obey a subpoena issued by the Board shall be guilty of a Class 1
43 misdemeanor."

44 **SECTION 23.** G.S. 90-210.124(a) reads as rewritten:

1 **"§ 90-210.124. Authorizing agent.**

2 (a) The following person, in the priority list below, shall have the right to serve
3 as an "authorizing agent":

4 (1) ~~An individual at least 18 years of age may authorize the cremation and~~
5 ~~disposition of the individual's own dead body in a written will,~~
6 ~~pursuant to health care power of attorney to the extent provided in~~
7 ~~Article 3 of Chapter 32 of the General Statutes, pursuant to a preneed~~
8 ~~funeral contract executed pursuant to Article 13D of Chapter 90 of the~~
9 ~~General Statutes, pursuant to a cremation authorization form executed~~
10 ~~pursuant to Article 13F of Chapter 90 of the General Statutes, or in a~~
11 ~~written statement signed by the individual and witnessed by two~~
12 ~~persons who are at least 18 years old.~~ An individual at least 18 years of
13 age may authorize the type, place, and method of disposition of the
14 individual's own dead body by methods in the following order:

- 15 a. Pursuant to a preneed funeral contract executed pursuant to
16 Article 13D of Chapter 90 of the General Statutes or pursuant to
17 a cremation authorization form executed pursuant to Article
18 13C of Chapter 90 of the General Statutes.
19 b. Pursuant to a written will.
20 c. Pursuant to a written statement other than a will signed by the
21 individual and witnessed by two persons who are at least 18
22 years old.
23 d. Pursuant to a health care power of attorney to the extent
24 provided in Article 3 of Chapter 32A of the General Statutes.

25 When an individual has authorized his or her own cremation and disposition in
26 accordance with this subsection, the individual or institution designated by that
27 individual shall act as the authorizing agent for that individual.

28 (2) If a decedent has left no written authorization for the cremation and
29 disposition of the decedent's body as permitted under subdivision (1)
30 of this subsection, the following competent persons in the order listed
31 may authorize the type, method, place, cremation, and disposition of
32 the decedent's body:

- 33 a. The surviving spouse.
34 b. A majority of the surviving children who are at least 18 years of
35 age and can be located after reasonable efforts.
36 c. The surviving parents.
37 d. A majority of the surviving siblings who are at least 18 years of
38 age and can be located after reasonable efforts.
39 e. A majority of the persons in the classes of the next degrees of
40 kinship, in descending order, who, under State law, would
41 inherit the decedent's estate if the decedent died intestate who
42 are at least 18 years of age and can be located after reasonable
43 efforts.

- 1 f. A person who has exhibited special care and concern for the
2 decedent and is willing and able to make decisions about the
3 cremation and disposition.
4 g. In the case of indigents or any other individuals whose final
5 disposition is the responsibility of the State or any of its
6 instrumentalities, a public administrator, medical examiner,
7 coroner, State-appointed guardian, or any other public official
8 charged with arranging the final disposition of the decedent
9 may serve as the authorizing agent.
10 h. In the case of individuals who have donated their bodies to
11 science or whose death occurred in a nursing home or private
12 institution and in which the institution is charged with making
13 arrangements for the final disposition of the decedent, a
14 representative of such institution may serve as the authorizing
15 agent in the absence of any of the above.
16 i. In the absence of any of the above, any person willing to
17 assume responsibility as authorizing agent, as specified in this
18 act.

19 This subsection does not grant to any person the right to cancel a preneed funeral
20 contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or to
21 cause or prohibit the substitution of a preneed licensee as authorized under
22 G.S. 90-210.63-90-210.63 or permit modification of preneed contracts under
23 G.S. 90-210.63A. If a person under this subsection is incompetent at the time of the
24 decedent's death, the person shall be treated as if he or she predeceased the decedent. An
25 attending physician may certify the incompetence of a person and the certification shall
26 apply to the rights under this subsection only. Any person under this subsection may
27 waive his or her rights under this subsection by any written statement notarized by a
28 notary public or signed by two witnesses."

29 **SECTION 24.** G.S. 90-210.129 is amended by adding the following new
30 subsections to read:

31 "(o) Unless the death falls under the jurisdiction of the Medical Examiner, before
32 the cremation of fetal remains of less than 20 weeks gestation, the crematory licensee
33 shall receive a written statement, on a form prescribed by the Board and signed by the
34 attending physician, acknowledging the circumstances, date, and time of the delivery of
35 the fetal remains from the mother.

36 (p) Before the cremation of fetal remains of 20 completed weeks gestation or
37 greater, the crematory licensee shall receive a fetal report of death as prescribed in
38 G.S.130A-114.

39 (q) Before the cremation of amputated body parts, the crematory licensee shall
40 receive a written statement, on a form prescribed by the Board and signed by the
41 attending physician acknowledging, the circumstances of the amputation. This section
42 does not apply to the disposition of body parts cremated pursuant to Part 3 of Article 16
43 of Chapter 130A of the General Statutes."

44 **SECTION 25.** G.S. 90-210.130(b) reads as rewritten:

1 "(b) The authorizing agent is responsible for the disposition of the cremated
2 remains. If, after a period of 30 days from the date of cremation, the authorizing agent
3 or the agent's representative has not specified the final disposition or claimed the
4 cremated remains, the crematory licensee or the person in possession of the cremated
5 remains may release the cremated remains to another family member upon written
6 notification to the authorizing agent delivered by certified mail or dispose of the
7 cremated remains only in a manner permitted in this section. The authorizing agent shall
8 be responsible for reimbursing the crematory licensee for all reasonable expenses
9 incurred in disposing of the cremated remains pursuant to this section. A record of such
10 disposition shall be made and kept by the person making the disposition. Upon
11 disposing of cremated remains in accordance with this section, the crematory licensee or
12 person in possession of the cremated remains shall be discharged from any legal
13 obligation or liability concerning such cremated remains."

14 **SECTION 26.** Article 13F of Chapter 90 of the General Statutes is amended
15 by adding the following new section to read:

16 **"§ 90-210.135. Cremation Societies.**

17 (a) No person, firm, or corporation licensed as a crematory under the provisions
18 of this Article may operate a cremation society without first registering the name of the
19 cremation society with the Board."

20 **SECTION 27.** G.S. 130A-420 reads as rewritten:

21 **"§ 130A-420. Authority to dispose of body or body parts.**

22 (a) An individual at least 18 years of age may authorize the type, place, and
23 method of disposition of the individual's own dead body in a written will, pursuant to a
24 health care power of attorney to the extent provided in Article 3 of Chapter 32A of the
25 General Statutes, pursuant to a preneed funeral contract executed pursuant to Article
26 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form
27 executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written
28 statement signed by the individual and witnessed by two persons who are at least 18
29 years old by methods in the following order:

30 (1) Pursuant to a preneed funeral contract executed pursuant to Article
31 13D of Chapter 90 of the General Statutes or pursuant to a cremation
32 authorization form executed pursuant to Article 13C of Chapter 90 of
33 the General Statutes.

34 (2) Pursuant to a written will.

35 (3) Pursuant to a written statement other than a will signed by the
36 individual and witnessed by two persons who are at least 18 years old.

37 (4) Pursuant to a health care power of attorney to the extent provided in
38 Article 3 of Chapter 32A of the General Statutes.

39 An individual may also delegate his or her right to dispose of his or her own dead
40 human body to any person by any means authorized in subdivisions (1) through (3) of
41 this subsection.

42 (b) If a decedent has left no written authorization for the disposal of the
43 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~~ children over 18 years of age, who can be located after reasonable efforts.
- (3) The surviving parents.
- (4) A majority of the surviving ~~siblings~~ siblings over 18 years of age, who can be located after reasonable efforts.
- (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~~ intestate who are at least 18 years of age and can be located after reasonable efforts.
- (6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.
- (7) 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.
- (8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.
- (9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

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 Statutes, to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63-90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section.

(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

1 person listed in subsection (b) of this section may authorize the disposition as if the
2 individual was deceased.

3 (d) This section does not apply to the disposition of dead human bodies as
4 anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or
5 the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General
6 Statutes."

7 **SECTION 28.** This act is effective when it becomes law.



SENATE BILL 1435: Amend Funeral Serv. Prac./Other Related Laws

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 26, 2007
Introduced by:	Sen. Atwater	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1435-CSSUF-67[v.1]		Committee Counsel

SUMMARY: *The PCS for Senate Bill 1435 makes various changes to laws regarding the practice of funeral service, mutual burial associations, preneed funeral funds, and cremations. The PCS also increases several of the fees collected by the Board of Funeral Service. The act is effective when it becomes law. What follows is a summary of the PCS provided by the Board (with PCS section numbers added and arranged in the order they appear in the PCS):*

The Board has received written and oral public comment on the proposed changes and incorporated several changes based on comments received. The following is a summary of the proposed legislation:

Chapter 90 Article 13A

Section 1. G.S. 90-210.18A. This amendment changes the ending date of terms of service from June 30 to December 31. The terms of current members would be extended.

Section 2. G.S. 90-210.20(e). This amendment excludes this practice from the definition of embalming to allow individuals to wash a dead human body if part of a religious practice or if done by immediately family members without pay.

G.S. 90-210.20(e1). This is a technical change.

G.S. 90-210.20(h). This is a technical change.

Section 3. G.S. 90-210.23(d1). This allows the Board to assess administrative costs up to \$5,000.00 if a Board disciplines a licensee during any show cause hearing. At least nine other North Carolina licensing Boards have statute authority to recover the costs of any administrative hearings. (Barbers, Cosmetic Art, Pharmacy, Insurance, Contractors, Nursing, Chiropractic, Veterinary Medicine and Psychology.) Board staff has conducted research with funeral regulatory boards in other jurisdictions. Georgia, South Carolina & Tennessee have statutory provisions allowing recovery of the investigative and hearing costs that lead to disciplinary action. The Board of Funeral Service is only seeking authority to recover costs of show cause proceedings when there is a finding against the licensee.

Section 4. G.S. 90-210.25(a)(4)b. This amendment requires a trainee to file an affidavit within 30 days of completing a traineeship.

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G.S. 90-210.25(a1). This amendment allows inactive licensees to receive credit for continuing education courses taken in another jurisdiction. This amendment also contains a technical change due to the repeal of G.S. 90-210.18.

G.S. 90-210.25(c)(6)a. This amendment clarifies that emergency personnel acting outside the scope of their employment must receive a permit from the Board to transport human remains.

G.S. 90-210.25(d)(2)a. Current law prohibits a funeral establishment from operating without a manager at all times. This amendment creates an exception to permit funeral establishments who lose their only licensee eligible to serve as manager to operate without a manager for 30 days provided a licensed funeral director works at the establishment.

G.S. 90-210.25(d)(4). This amendment is a technical change to include sanctions less than suspension or revocation of funeral establishment permits for violations of law.

G.S. 90-210.25(e)(1)a1. This addition gives the Board the authority to deny an individual license if they have been denied an occupational license by another jurisdiction on fitness grounds.

G.S. 90-210.25(e)(1)j. This amendment clarifies the Board's authority to discipline licensees for violating laws governing the filing of death certificates.

G.S. 90-210.25(e)(1)l. This amendment requires a funeral director to surrender cremated remains promptly upon request.

G.S. 90-210.25(e)(1)m. This amendment clarifies the Board's authority to discipline licensees for violating vital records laws.

G.S. 90-210.25(e)(2). This amendment gives the Board the authority to require continuing education prior to license reinstatement.

G.S. 90-210.25(e). This amendment requires a funeral home to give a written disclosure that charges for assigning insurance policies to finance companies are passed on to the consumer. This amendment also allows the Board to prescribe other disclosures to protect consumers through rulemaking.

G.S. 90-210.25(f). Current law levies no penalty for operating a funeral establishment without a permit other than injunctive relief. This amendment makes this offense a Class 2 misdemeanor.

Section 5. G.S. 90-210.27A(g). This amendment prohibits the display of merchandise in a chapel and makes a conforming change.

G.S. 90-210.27A(i). This amendment prohibits a licensee from using the name of any person, living or deceased, if they have never been associated with the business.

Section 6. G.S. 90-210.28. This section raises fee ceilings to permit the Board to increase its auditing and enforcement activities to protect consumers. The Board's research suggests the last fee increase for individual licenses and funeral establishments was in 1989. This also contains a technical change.

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Section 7. G.S. 90-210.29A-1. Current public records laws subject examination scores to public inspection, which differs from procedures of other licensing boards. This section excludes examination scores from the inspection provisions of public records laws but allows anyone making a public records request to learn if the individual has obtained a passing score. At least three licensing Boards exclude examination scores from public record: Geologists, Soil Scientists, and Real Estate.

Article 13D

Section 8. G.S. 90-210.62. This change clarifies the definition of inflation-proof contract and the Board's authority to prescribe a uniform preneed contract form. Consumers are sometimes confused by the terms "guarantee" and "fixed price" by believing the price paid for funeral merchandise and services at the time of contract execution will remain the same price at a future date of death which could be years away. While the price may not increase in very short term, funeral homes are subject to inflationary pressures like any business, so it is likely the prices will increase over a long term. The accurate description of the legal requirements is that the funeral home is entitled to the interest or policy value growth which they use to offset the price increases. Conversely the funeral establishment has the legal obligation to absorb losses on funeral merchandise and services that may occur with a fully funded inflation-proof contract. This change will not effect the funeral establishment's legal obligations under the terms of a fully funded inflation-proof preneed contract.

Section 9. G.S. 90-210.63A. This section establishes when a preneed contract may be modified by the parties. This section also gives a person who elects to prepay his own funeral the right to make the arrangements irrevocable except by court order or to designate the parties who may modify them. This section also governs how funeral funds are allocated when a preneed contract is modified to increase or decrease the total cost of services under an inflation-proof contract.

Section 10. 90-210.64. These are technical and conforming changes.

Section 11. G.S. 90-210.65(e). Current law requires a court order from the General Court of Justice to revoke a preneed contract. Because many preneed contracts are created by individuals who receive Medicaid, this section gives the Board the authority to order a contract revoked for individuals who wish to transfer a contract to a funeral home in another state.

Section 12. G.S. 90-210.67(b). This section raises fees for a preneed establishment license. The Board's research suggests that these fee ceilings have not been raised since 1992. This section also requires all funeral homes who receive a new preneed license or whose preneed license lapses or is revoked after the legislation is signed into law to be covered by a surety bond for five years or until it demonstrates to the satisfaction of the Board that it is solvent. The Board would have the authority to extend the bond if a claim is paid while in force. This provision would apply to all newly licensed preneed firms after January 1, 2008.

Section 13. G.S. 90-210.68(d). Current law limits the ability of preneed trustees to receive information from insurance companies for statutory reporting purposes. This amendment requires insurance companies to provide this information to the preneed trustee. In order to execute and fund a preneed contract, the policy owner or their legal representative would also execute an assignment or beneficiary designation naming the preneed funeral establishment. It is the Board's position that this authorizes the

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insurance companies to release the information necessary to comply with the Board's annual reporting requirements.

Section 14. G.S. 90-210.68(e). Current law limits the Board's authority to substitute a trustee if a funeral home closes or has its license revoked. This amendment gives the Board the authority to substitute a trustee but does not bind either the funeral home or consumer to a contract without their consent.

Section 15. G.S. 90-210.69(c)(7). This provision adds to the Board's authority to deny a license for revocation, suspension, or denial of another occupational license.

Article 13E

Section 16. G.S. 210.102. This change requires appeals from orders against mutual burial associations to follow the same procedure for all other administrative appeals.

Section 17. G.S. 90-210.107. Current law requires an in-person meeting of members to dissolve a burial association. Most association members are elderly and are often unable to attend such meetings easily. The proposed change allows members to vote by written proxy to dissolve similar to other corporations. The amendment also gives the Board authority to dissolve associations by administrative action when funeral homes close or have their licenses revoked.

Article 13F

Section 18. G.S. 90-210.121(22). This change eliminates the use of certain containers, such as coffee cans, to return cremated remains to families. There are also conforming changes throughout the Article.

Section 19. G.S. 90-210.122(c). This is a technical change to conform to the passage of G.S. 90-210.18A.

Section 20. G.S. 90-210.123(g). This section gives the Board the authority to deny a license if the applicant has had a similar license denied or revoked by another jurisdiction.

Section 21. G.S. 90-210.123(i). This contains technical changes to conform to other laws.

Section 22. G.S. 90-210.124. The changes to this section are to harmonize the proposed changes to G.S. 130A-420.

Section 23. G.S. 90-210.129. Current law requires the same documentation for fetal deaths that are required for other deaths, but vital records requirements do not require such information to be filed. This section defines what documentation is required to cremate fetuses and other human body parts. This does not impose a new reporting requirement for vital records.

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Section 24. G.S. 90-210.130(b). This section allows other family members to possess unclaimed cremated remains after thirty days if notice is provided to the authorizing agent.

Section 25. G.S. 90-210.135. This change requires crematories that run cremation societies to register the name with the Board. No fees or other regulations are associated with this requirement.

Chapter 130

Section 26. G.S. 130A-420. Current law provides a hierarchy to dispose of human remains. This section clarifies many of the problems encountered by the Board in authorizing disposition. First, a hierarchy is established for the types of disposition documents, and the deceased is given the right to delegate the right to make funeral arrangements to any other person in these documents. Second, current law provides no mechanism to pass over individuals' rights to make funeral arrangements in cases of simultaneous accident or other medical hardship. This change allows a physician to certify an individual's incapacity and bypass him instead of seeking a temporary guardianship to act on their behalf. This is consistent with provisions of current NC law for health care agents. This section also makes technical changes to harmonize differences between cremation authorization laws and other forms of disposition to promote uniform interpretation. Board staff continues to work with the NC Bar Association on this provision.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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D

SENATE BILL 1435
PROPOSED COMMITTEE SUBSTITUTE S1435-PCS75450-Suf-67

Short Title: Amend Funeral Serv. Prac./Other Related Laws.

(Public)

Sponsors:

Referred to:

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LAWS PERTAINING TO THE PRACTICE OF
3 FUNERAL SERVICE, MUTUAL BURIAL ASSOCIATIONS, PRENEED
4 FUNERAL FUNDS, AND CREMATIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 90-210.18A reads as rewritten:

7 "§ 90-210.18A. Board of Funeral Service created; qualifications; vacancies;
8 removal.

9 (a) The General Assembly declares that the practice of funeral service affects the
10 public health, safety, and welfare and is subject to regulation and control in the public
11 interest. The public interest requires that only qualified persons be permitted to practice
12 funeral service in North Carolina and that the profession merit the confidence of the
13 public. This Article shall be liberally construed to accomplish these ends.

14 (b) The North Carolina Board of Funeral Service is created and shall regulate the
15 practice of funeral service in this State. The Board shall have nine members as follows:

16 (1) Four members appointed by the Governor from nominees
17 recommended by the North Carolina Funeral Directors Association,
18 Inc. These members shall be persons licensed under this Article.

19 (2) Two members appointed by the Governor from nominees
20 recommended by the Funeral Directors & Morticians Association of
21 North Carolina, Inc. These members shall be persons licensed under
22 this Article.

23 (3) One member appointed by the Governor who is licensed under this
24 Article and who is not affiliated with any funeral service trade
25 association.

26 (4) One member appointed by the General Assembly, upon the
27 recommendation of the President Pro Tempore of the Senate. This

member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

- (5) One member appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives. This member shall be a person who is not licensed under this Article or employed by a person who is licensed under this Article.

Members of the Board shall serve staggered three-year terms, ending on ~~June 30~~ December 31 of the last year of the term or when a successor has been duly appointed, whichever is later. No member may serve more than two complete consecutive terms.

(c) Vacancies. – A vacancy shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(d) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved."

SECTION 2. G.S. 90-210.20 reads as rewritten:

"§ 90-210.20. Definitions.

(a) "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public, any announcement or statement in a newspaper, magazine, or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio, television station, or electronic medium.

(b) "Board" means the North Carolina Board of Funeral Service.

(c) "Burial" includes interment in any form, cremation and the transportation of the dead human body as necessary therefor.

(c1) "Dead human bodies", as used in this Article includes fetuses beyond the second trimester and the ashes from cremated bodies.

(d) "Embalmer" means any person engaged in the practice of embalming.

(e) "Embalming" means the preservation and disinfection or attempted preservation and disinfection of dead human bodies by application of chemicals externally or internally or both and the practice of restorative art including the restoration or attempted restoration of the appearance of a dead human body. Embalming shall not include the washing or use of soap and water to cleanse or prepare a dead human body for disposition by the authorized agents, family, or friends of the deceased who do so privately without pay or as part of the ritual washing and preparation of dead human bodies prescribed by religious practices; provided, that no dead human body shall be handled in a manner inconsistent with G.S. 130A-395.

(e1) ~~"Funeral chapel"~~ "Chapel" means a chapel or other facility separate from the funeral establishment premises for the primary purpose of reposing of dead human

bodies, visitation or funeral ceremony that is owned, operated, or maintained by a funeral establishment ~~or other licensee~~ under this Article, and that does not use the word "funeral" in its name, on a sign, in a directory, in advertising or in any other manner; in which or on the premises of which there is not displayed any caskets or other funeral merchandise; in which or on the premises of which there is not located any preparation room; and which no owner, operator, employee, or agent thereof represents the chapel to be a funeral establishment.

(f) "Funeral directing" means engaging in the practice of funeral service except embalming.

(g) "Funeral director" means any person engaged in the practice of funeral directing.

(h) "Funeral establishment" means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the ~~profession-practice~~ of funeral service.

(i) "Funeral service licensee" means a person who is duly licensed and engaged in the practice of funeral service.

(j) "Funeral service" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time-limited, flexible, group-centered response to death.

(k) "Practice of funeral service" means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

(l) "Resident trainee" means a person who is engaged in preparing to become licensed for the practice of funeral directing, embalming or funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral directing, embalming or funeral service in the State of North Carolina under the provisions of this Chapter, and who is duly registered as a resident trainee with the Board."

SECTION 3. G.S. 90-210.23 reads as rewritten:

"§ 90-210.23. Powers and duties of the Board.

(a) The Board is authorized to adopt and promulgate such rules and regulations for transaction of its business and for the carrying out and enforcement of the provisions of this Article as may be necessary and as are consistent with the laws of this State and of the United States.

(b) The Board shall elect from its members a president, a vice-president and a secretary, no two offices to be held by the same person. The president and vice-president and secretary shall serve for one year and until their successors shall be

1 elected and qualified. The Board shall have authority to engage adequate staff as
2 deemed necessary to perform its duties.

3 (c) The members of the Board shall serve without compensation provided that
4 such members shall be reimbursed for their necessary traveling expenses and the
5 necessary expenses incident to their attendance upon the business of the Board, and in
6 addition thereto they shall receive per diem and expense reimbursement as provided in
7 G.S. 93B-5 for every day actually spent by such member upon the business of the
8 Board. All expenses, salaries and per diem provided for in this Article shall be paid
9 from funds received under the provisions of this Article and shall in no manner be an
10 expense to the State.

11 (d) Every person licensed by the Board and every resident trainee shall furnish all
12 information required by the Board reasonably relevant to the practice of the profession
13 or business for which the person is a licensee or resident trainee. Every funeral service
14 establishment and its records and every place of business where the practice of funeral
15 service or embalming is carried on and its records shall be subject to inspection by the
16 Board during normal hours of operation and periods shortly before or after normal hours
17 of operation and shall furnish all information required by the Board reasonably relevant
18 to the business therein conducted. Every licensee, resident trainee, embalming facility,
19 and funeral service establishment shall provide the Board with a current post-office
20 address which shall be placed on the appropriate register and all notices required by law
21 or by any rule or regulation of the Board to be mailed to any licensee, resident trainee,
22 embalming facility, or funeral service establishment shall be validly given when mailed
23 to the address so provided.

24 (d1) The Board is empowered to hold hearings in accordance with the provisions
25 of this Article and of Chapter 150B to subpoena witnesses and to administer oaths to or
26 receive the affirmation of witnesses before the Board.

27 In any show cause hearing before the Board held under the authority of Chapter
28 150B of the General Statutes where the Board imposes discipline against a licensee, the
29 Board may recover the costs, other than attorneys' fees, of holding the hearing against
30 all respondents jointly, not to exceed five thousand dollars (\$5,000).

31 (e) The Board is empowered to regulate and inspect, according to law, funeral
32 service establishments and embalming facilities, their operation, and the licenses under
33 which they are operated, and to enforce as provided by law the rules, regulations, and
34 requirements of the Division of Health Services and of the city, town, or county in
35 which the funeral service establishment or embalming facility is maintained and
36 operated. Any funeral establishment or embalming facility that, upon inspection, is
37 found not to meet all of the requirements of this Article shall pay a reinspection fee to
38 the Board for each additional inspection that is made to ascertain that the deficiency or
39 other violation has been corrected. The Board is also empowered to enforce compliance
40 with the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as
41 amended from time to time.

42 (f) The Board may establish, supervise, regulate and control programs for the
43 resident trainee. It may approve schools of mortuary science or funeral service,
44 graduation from which is required by this Article as a qualification for the granting of

any license, and may establish essential requirements and standards for such approval of mortuary science or funeral service schools.

(g) Schools for teaching mortuary science which are approved by the Board shall have extended to them the same privileges as to the use of bodies for dissecting while teaching as those granted in this State to medical colleges, but such bodies shall be obtained through the same agencies which provide bodies for medical colleges.

(h) The Board shall adopt a common seal.

(h1) The Board shall have 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. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(h2) The Board may employ legal counsel and clerical and technical assistance, and fix the compensation therefor, and incur such other expenses as may be deemed necessary in the performance of its duties and the enforcement of the provisions of this Article or as otherwise required by law and as may be necessary to carry out the powers herein conferred.

(i) The Board may perform such other acts and exercise such other powers and duties as may be provided elsewhere in this Article or otherwise by law and as may be necessary to carry out the powers herein conferred."

SECTION 4. G.S. 90-210.25 reads as rewritten:

"§ 90-210.25. Licensing.

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

- a. Be at least 18 years of age.
- b. Be of good moral character.
- c. Be a graduate of a Funeral Director Program at a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
- d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
- e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, pathology, funeral directing, business law, funeral law, funeral management, and accounting.
 2. Repealed by Session Laws 1997-399, s. 5.
 3. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (2) To be licensed for the practice of embalming under this Article, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of a mortuary science college approved by the Board.
 - d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.
 - e. Have passed an oral or written embalmer examination on the following subjects:
 1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
 2. Repealed by Session Laws 1997-399, s. 6.
 3. Laws of North Carolina and rules of the Board and other agencies dealing with the care, transportation and disposition of dead human bodies.
- (3) To be licensed for the practice of funeral service under this Article, a person must:
- a. Be at least 18 years of age.
 - b. Be of good moral character.
 - c. Be a graduate of and receive an associate degree from a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 60 semester hours or 90 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.
 - d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

- 1 e. Have passed an oral or written funeral service examination on
2 the following subjects:
- 3 1. Psychology, sociology, funeral directing, business law,
4 funeral law, funeral management, and accounting.
 - 5 2. Embalming, restorative arts, chemistry, pathology,
6 microbiology, and anatomy.
 - 7 3. Repealed by Session Laws 1997-399, s. 7.
 - 8 4. Laws of North Carolina and rules of the Board and other
9 agencies dealing with the care, transportation and
10 disposition of dead human bodies.
- 11 (4) a. A person desiring to become a resident trainee shall apply to the
12 Board on a form provided by the Board. The application shall
13 state that the applicant is not less than 18 years of age, of good
14 moral character, and is the graduate of a high school or the
15 equivalent thereof, and shall indicate the licensee under whom
16 the applicant expects to train. A person training to become an
17 embalmer may serve under either a licensed embalmer or a
18 funeral service licensee. A person training to become a funeral
19 director may serve under either a licensed funeral director or a
20 funeral service licensee. A person training to become a funeral
21 service licensee shall serve under a funeral service licensee. The
22 application must be sustained by oath of the applicant and be
23 accompanied by the appropriate fee. When the Board is
24 satisfied as to the qualifications of an applicant it shall instruct
25 the secretary to issue a certificate of resident traineeship.
- 26 b. ~~When~~ Within 30 days of a resident trainee ~~leaves~~ leaving the
27 proctorship of the licensee under whom the trainee has worked,
28 the licensee shall file with the Board an affidavit showing the
29 length of time served with the licensee by the trainee, and the
30 affidavit shall be made a matter of record in the Board's office.
31 The licensee shall deliver a copy of the affidavit to the trainee.
- 32 c. A person who has not completed the traineeship and wishes to
33 do so under a licensee other than the one whose name appears
34 on the original certificate may reapply to the Board for
35 approval.
- 36 d. A certificate of resident traineeship shall be signed by the
37 resident trainee and upon payment of the renewal fee shall be
38 renewable one year after the date of original registration; but
39 the certificate may not be renewed more than two times. The
40 Board shall mail to each registered trainee at his last known
41 address a notice that the renewal fee is due and that, if not paid
42 within 30 days of the notice, the certificate will be canceled. A
43 late fee, in addition to the renewal fee, shall be charged for a
44 late renewal, but the renewal of the registration of any resident

1 trainee who is engaged in the active military service of the
2 United States at the time renewal is due may, at the discretion
3 of the Board, be held in abeyance for the duration of that
4 service without penalties. No credit shall be allowed for the
5 12-month period of resident traineeship that shall have been
6 completed more than five years preceding the examination for a
7 license.

8 e. All registered resident trainees shall report to the Board at least
9 once every month during traineeship upon forms provided by
10 the Board listing the work which has been completed during the
11 preceding month of resident traineeship. The data contained in
12 the reports shall be certified as correct by the licensee under
13 whom the trainee has served during the period and by the
14 licensed person who is managing the funeral service
15 establishment. Each report shall list the following:

- 16 1. For funeral director trainees, the conduct of any funerals
17 during the relevant time period,
- 18 2. For embalming trainees, the embalming of any bodies
19 during the relevant time period,
- 20 3. For funeral service trainees, both of the activities named
21 in 1 and 2 of this subsection, engaged in during the
22 relevant time period.

23 f. To meet the resident traineeship requirements of
24 G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and
25 G.S. 90-210.25(a)(3) the following must be shown by the
26 affidavit(s) of the licensee(s) under whom the trainee worked:

- 27 1. That the funeral director trainee has, under supervision,
28 assisted in directing at least 25 funerals during the
29 resident traineeship,
- 30 2. That the embalmer trainee has, under supervision,
31 assisted in embalming at least 25 bodies during the
32 resident traineeship,
- 33 3. That the funeral service trainee has, under supervision,
34 assisted in directing at least 25 funerals and, under
35 supervision, assisted in embalming at least 25 bodies
36 during the resident traineeship.

37 g. The Board may suspend or revoke a certificate of resident
38 traineeship for violation of any provision of this Article.

39 h. Each sponsor for a registered resident trainee must during the
40 period of sponsorship be actively employed with a funeral
41 establishment. The traineeship shall be a primary vocation of
42 the trainee.

43 i. Only one resident trainee may register and serve at any one time
44 under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before February 1 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

- 1 c. All licensees now or hereafter licensed in North Carolina shall
2 take continuing education courses in subjects relating to the
3 practice of the profession for which they are licensed, to the end
4 that the benefits of learning and reviewing skills will be utilized
5 and applied to assure proper service to the public.
- 6 d. As a prerequisite to the annual renewal of a license, the licensee
7 must complete, during the year immediately preceding renewal,
8 at least five hours of continuing education courses, of which the
9 Board may require licensees to take up to two hours specified
10 by the Board. All continuing education courses must be
11 approved by the Board prior to enrollment. A licensee who
12 completes more than five hours in a year may carry over a
13 maximum of five hours as a credit to the following year's
14 requirement. A licensee who is issued an initial license on or
15 after July 1 does not have to satisfy the continuing education
16 requirement for that year.
- 17 e. The Board shall not renew a license unless fulfillment of the
18 continuing education requirement has been certified to it on a
19 form provided by the Board, but the Board may waive this
20 requirement for renewal in cases of certified illness or undue
21 hardship or where the licensee lives outside of North Carolina
22 and does not practice in North Carolina, and the Board shall
23 waive the requirement for all licensees who were licensed on or
24 before December 31, 2003, and have been licensed in North
25 Carolina for a continuous period of 25 years or more, for all
26 licensees who are licensed on or after January 1, 2004, who
27 have been licensed for a continuous period of 25 years or more
28 and have attained the age of 60 years, and for all licensees who
29 are, at the time of renewal, members of the General Assembly.
- 30 f. The Board shall cause to be established and offered to the
31 licensees, each calendar year, at least eight hours of continuing
32 education courses. The Board may charge licensees attending
33 these courses a reasonable registration fee in order to meet the
34 expenses thereof and may also meet those expenses from other
35 funds received under the provisions of this Article.
- 36 g. Any person who having been previously licensed by the Board
37 as a funeral director or embalmer prior to July 1, 1975, shall not
38 be required to satisfy the requirements herein for licensure as a
39 funeral service licensee, but shall be entitled to have such
40 license renewed upon making proper application therefor and
41 upon payment of the renewal fee provided by the provisions of
42 this Article. Persons previously licensed by the Board as a
43 funeral director may engage in funeral directing, and persons
44 previously licensed by the Board as an embalmer may engage

1 in embalming. Any person having been previously licensed by
2 the Board as both a funeral director and an embalmer may upon
3 application therefor receive a license as a funeral service
4 licensee.

- 5 h. The Department of Justice may provide a criminal record check
6 to the Board for a person who has applied for a new or renewal
7 license, or certification through the Board. The Board shall
8 provide to the Department of Justice, along with the request, the
9 fingerprints of the applicant, any additional information
10 required by the Department of Justice, and a form signed by the
11 applicant consenting to the check of the criminal record and to
12 the use of the fingerprints and other identifying information
13 required by the State or national repositories. The applicant's
14 fingerprints shall be forwarded to the State Bureau of
15 Investigation for a search of the State's criminal history record
16 file, and the State Bureau of Investigation shall forward a set of
17 the fingerprints to the Federal Bureau of Investigation for a
18 national criminal history check. The Board shall keep all
19 information pursuant to this subdivision privileged, in
20 accordance with applicable State law and federal guidelines,
21 and the information shall be confidential and shall not be a
22 public record under Chapter 132 of the General Statutes.

23 The Department of Justice may charge each applicant a fee
24 for conducting the checks of criminal history records authorized
25 by this subdivision.

26 (a1) Inactive Licenses. – Any person holding a license issued by the Board for
27 funeral directing, for embalming, or for the practice of funeral service may apply for an
28 inactive license in the same category as the active license held. The inactive license is
29 renewable annually. Continuing education is not required for the renewal of an inactive
30 license. ~~The only activity that a holder of an inactive license may not engage in is to~~
31 ~~vote pursuant to G.S. 90-210.18(c)(2) any activity requiring an active license.~~ The
32 holder of an inactive license may apply for an active license in the same category, and
33 the Board shall issue an active license if the applicant has completed in North Carolina a
34 total number of hours of accredited continuing education equal to five times the number
35 of years the applicant held the inactive license. No application fee is required for the
36 reinstatement of an active license pursuant to this subsection. The holder of an inactive
37 license who returns to active status shall surrender the inactive license to the Board.

38 (a2) In order to engage in the practice of funeral directing or funeral service, such
39 a licensee must own, be employed by, or otherwise be an agent of a licensed funeral
40 establishment; except that such a licensee may practice funeral directing or funeral
41 service if:

- 42 (1) Employed by a college of mortuary science; or
43 (2) The licensee:

- a. Maintains all of his or her business records at a location made known to the Board and available for inspection by the Board under the same terms and conditions as the business records of a licensed funeral establishment;
- b. Complies with rules and regulations imposed on funeral establishments and the funeral profession that are designed to protect consumers, to include, but not be limited to, the Federal Trade Commission's laws and rules requiring General Price Lists and Statements of Goods and Services; and
- c. Pays to the Board the funeral establishment license fee required by law and set by the Board.

Nothing in this subdivision shall preclude a licensee from arranging cremations and cremating human remains while employed by a crematory.

(b) Persons Licensed under the Laws of Other Jurisdictions. –

- (1) The Board shall grant licenses to funeral directors, embalmers and funeral service licensees, licensed in other states, territories, the District of Columbia, and foreign countries, when it is shown that the applicant holds a valid license as a funeral director, embalmer or funeral service licensee issued by the other jurisdiction, has demonstrated knowledge of the laws and rules governing the profession in North Carolina and has submitted proof of his good moral character; and either that the applicant has continuously practiced the profession in the other jurisdiction for at least three years immediately preceding his application, or the Board has determined that the licensing requirements for the other jurisdiction are substantially similar to those of North Carolina.
- (2) The Board shall periodically review the mortuary science licensing requirements of other jurisdictions and shall determine which licensing requirements are substantially similar to the requirements of North Carolina.
- (3) The Board may issue special permits, to be known as courtesy cards, permitting nonresident funeral directors, embalmers and funeral service licensees to remove bodies from and to arrange and direct funerals and embalm bodies in this State, but these privileges shall not include the right to establish a place of business in or engage generally in the business of funeral directing and embalming in this State. Except for special permits issued by the Board for teaching continuing education programs and for work in connection with disasters, no special permits may be issued to nonresident funeral directors, embalmers, and funeral service licensees from states that do not issue similar courtesy cards to persons licensed in North Carolina pursuant to this Article.

(c) Registration, Filing and Transportation. –

- (1) The holder of any license granted by this State for those within the funeral service profession or renewal thereof provided for in this Article shall cause registration to be filed in the office of the board of health of the county or city in which he practices his profession, or if there be no board of health in such county or city, at the office of the clerk of the superior court of such county. All such licenses, certificates, duplicates and renewals thereof shall be displayed in a conspicuous place in the funeral establishment where the holder renders service.
- (2) It shall be unlawful for any railway agent, express agency, baggage master, conductor or other person acting as such, to receive the dead body of any person for shipment or transportation by railway or other public conveyance, to a point outside of this State, unless the body is accompanied by a burial-transit permit.
- (3) The "transportation or removal of a dead human body" shall mean the removal of a dead human body for a fee from the location of the place of death or discovery of death or the transportation of the body to or from a medical facility, funeral establishment or facility, crematory or related holding facility, place of final disposition, or place designated by the Medical Examiner for examination or autopsy of the dead human body.
- (4) Any individual, not otherwise exempt from this subsection, shall apply for and receive a permit from the Board before engaging in the transportation or removal of a dead human body in this State. Unless otherwise exempt from this subsection, no corporation or other business entity shall engage in the transportation or removal of a dead human body unless it has in its employ at least one individual who holds a permit issued under this section. No individual permit holder shall engage in the transportation or removal of a dead human body for more than one person, firm, or corporation without first providing the Board with written notification of the name and physical address of each such employer.
- (5) The following persons shall be exempt from the permit requirements of this section but shall otherwise be subject to subdivision (9) of this subsection and any rules relating to the proper handling, care, removal, or transportation of a dead human body:

 - a. Licensees under this Article and their employees.
 - b. Employees of common carriers.
 - c. Except as provided in sub-subdivision (6)c. of this section, employees of the State and its agencies and employees of local governments and their agencies.
 - d. Funeral directors licensed in another state and their employees.
- (6) The following persons shall be exempt from this section:

- a. Emergency medical technicians, rescue squad workers, volunteer and paid firemen, and law enforcement ~~officers-officers~~ while acting within the scope of their employment.
 - b. Employees of public or private hospitals, nursing homes, or long-term care facilities, while handling a dead human body within such facility or while acting within the scope of their employment.
 - c. State and county medical examiners and their investigators.
 - d. Any individual transporting cremated remains.
 - e. Any individual transporting or removing a dead human body of their immediate family or next of kin.
 - f. Any individual who has exhibited special care and concern for the decedent.
- (7) Individuals eligible to receive a permit under this section for the transportation or removal of a dead human body for a fee, shall:
- a. Be at least 18 years of age.
 - b. Possess and maintain a valid drivers license issued by this State and provide proof of all liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body.
 - c. Affirmatively state under oath that the person has read and understands the statutes and rules relating to the removal and transportation of dead human bodies and any guidelines as may be adopted by the Board.
 - d. Provide three written character references on a form prescribed by the Board, one of which must be from a licensed funeral director.
 - e. Be of good moral character.
- (8) The permit issued under this section shall expire on December 31 of each year. The application fee for the individual permit shall not exceed one hundred twenty-five dollars (\$125.00). A fee, not to exceed one hundred dollars (\$100.00), in addition to the renewal fee not to exceed seventy-five dollars (\$75.00), shall be charged for any application for renewal received by the Board after February 1 of each year.
- (9) No person shall transport a dead human body in the open cargo area or passenger area of a vehicle or in any vehicle in which the body may be viewed by the public. Any person removing or transporting a dead human body shall either cover the body, place it upon a stretcher designed for the purpose of transporting humans or dead human bodies in a vehicle, and secure such stretcher in the vehicle used for transportation, or shall enclose the body in a casket or container

designed for common carrier transportation, and secure the casket or container in the vehicle used for transportation. No person shall fail to treat a dead human body with respect at all times. No person shall take a photograph or video recording of a dead human body without the consent of a member of the deceased's immediate family or next of kin or other authorizing agent.

(10) The Board may adopt rules under this section including permit application procedures and the proper procedures for the removal, handling, and transportation of dead human bodies. The Board shall consult with the Office of the Chief Medical Examiner before initiating rule making under this section and before adopting any rules pursuant to this section. Nothing in this section prohibits the Office of the Chief Medical Examiner from adopting policies and procedures regarding the removal, transportation, or handling of a dead human body under the jurisdiction of that office that are more stringent than the laws in this section or any rules adopted under this section. Any violation of this section or rules adopted under this section may be punished by the Board by a suspension or revocation of the permit to transport or remove dead human bodies or by a term of probation. The Board may, in lieu of any disciplinary measure, accept a penalty not to exceed five thousand dollars (\$5,000) per violation.

(11) Each applicant for a permit shall provide the Board with the applicant's home address, name and address of any corporation or business entity employing such individual for the removal or transportation of dead human bodies, and the make, year, model, and license plate number of any vehicle in which a dead human body is transported. A permittee shall provide written notification to the Board of any change in the information required to be provided to the Board by this section or by the application for a permit within 30 days after such change takes place.

(12) If any person shall engage in or hold himself out as engaging in the business of transportation or removal of a dead human body without first having received a permit under this section, the person shall be guilty of a Class 2 misdemeanor.

(13) The Board shall have the authority to inspect any place or premises that the business of removing or transporting a dead human body is carried out and shall also have the right of inspection of any vehicle and equipment used by a permittee for the removal or transportation of a dead human body.

(d) Establishment Permit. –

(1) No person, firm or corporation shall conduct, maintain, manage or operate a funeral establishment unless a permit for that establishment has been issued by the Board and is conspicuously displayed in the establishment. Each funeral establishment at a specific location shall

be deemed to be a separate entity and shall require a separate permit and compliance with the requirements of this Article.

(2) A permit shall be issued when:

a. It is shown that the funeral establishment has in charge a person, known as a manager, licensed for the practice of funeral directing or funeral service, who shall not be permitted to manage more than one funeral establishment. The manager shall be charged with overseeing the daily operation of the funeral establishment. If the manager leaves the employment of the funeral establishment and is the only licensee employed who is eligible to serve as manager, the funeral establishment may operate without a manager for a period not to exceed 30 days so long as: (i) the funeral establishment retains one or more licensees to perform all services requiring a license under this Article; (ii) the licensees are not practicing under the exception authorized by G.S. 90-210.25(a2) and would otherwise be eligible to serve as manager; and (iii) the funeral establishment registers the name of the licensees with the Board.

b. The Board receives a list of the names of all part-time and full-time licensees employed by the establishment.

c. It is shown that the funeral establishment satisfies the requirements of G.S. 90-210.27A.

d. The Board receives payment of the permit fee.

(3) Applications for funeral establishment permits shall be made on forms provided by the Board and filed with the Board by the owner, a partner, a member of the limited liability company, or an officer of the corporation by January 1 of each year, and shall be accompanied by the application fee or renewal fee, as the case may be. All permits shall expire on December 31 of each year. If the renewal application and renewal fee are not received in the Board's office on or before February 1, a late renewal fee, in addition to the regular renewal fee, shall be charged.

(4) The Board may place on probation, refuse to issue or renew, suspend, or revoke a permit when an owner, partner, manager, member, operator, or officer of the funeral establishment violates any provision of this Article or any regulations of the Board, or when any agent or employee of the funeral establishment, with the consent of any person, firm or corporation operating the funeral establishment, violates any of those provisions, rules or regulations. In any case in which the Board is entitled to place a funeral establishment permittee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation. In any case in which the Board is entitled to suspend,

1 revoke, or refuse to renew a permit, the Board may accept from the
2 funeral establishment permittee an offer to pay a penalty of not more
3 than five thousand dollars (\$5,000). The Board may either accept a
4 penalty or revoke or refuse to renew a license, but not both. Any
5 penalty under this subdivision may be in addition to any penalty
6 assessed against one or more licensed individuals employed by the
7 funeral establishment.

- 8 (5) Funeral establishment permits are not transferable. A new application
9 for a permit shall be made to the Board within 30 days of a change of
10 ownership of a funeral establishment.

11 (d1) Embalming Outside Establishment. – An embalmer who engages in
12 embalming in a facility other than a funeral establishment or in the residence of the
13 deceased person shall, no later than January 1 of each year, register the facility with the
14 Board on forms provided by the Board.

15 (e) Revocation; Suspension; Compromise; Disclosure. –

- 16 (1) Whenever the Board finds that an applicant for a license or a person to
17 whom a license has been issued by the Board is guilty of any of the
18 following acts or omissions and the Board also finds that the person
19 has thereby become unfit to practice, the Board may suspend or revoke
20 the license or refuse to issue or renew the license, in accordance with
21 the procedures set out in Chapter 150B of the General Statutes:

22 a. Conviction of a felony or a crime involving fraud or moral
23 turpitude.

24 a1. Denial, suspension, or revocation of an occupational or business
25 license by another jurisdiction.

26 b. Fraud or misrepresentation in obtaining or renewing a license or
27 in the practice of funeral service.

28 c. False or misleading advertising as the holder of a license.

29 d. Solicitation of dead human bodies by the licensee, his agents,
30 assistants, or employees; but this paragraph shall not be
31 construed to prohibit general advertising by the licensee.

32 e. Employment directly or indirectly of any resident trainee agent,
33 assistant or other person, on a part-time or full-time basis, or on
34 commission, for the purpose of calling upon individuals or
35 institutions by whose influence dead human bodies may be
36 turned over to a particular licensee.

37 f. The payment or offer of payment of a commission by the
38 licensee, his agents, assistants or employees for the purpose of
39 securing business except as authorized by Article 13D of this
40 Chapter.

41 g. Gross immorality, including being under the influence of
42 alcohol or drugs while practicing funeral service.

43 h. Aiding or abetting an unlicensed person to perform services
44 under this Article, including the use of a picture or name in

connection with advertisements or other written material published or caused to be published by the licensee.

- i. Failing to treat a dead human body with respect at all times.
- j. Violating or cooperating with others to violate any of the provisions of this ~~Article~~, Article or Articles 13D, 13E, or 13F of Chapter 90 of the General Statutes, any rules and regulations of the Board, or the standards set forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended from time to time.
- k. Violation of any State law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies.
- l. Refusing to surrender promptly the custody of a dead human body or cremated remains upon the express order of the person lawfully entitled to the custody thereof.
- m. Knowingly making any false statement on a certificate of ~~death~~ death or violating or cooperating with others to violate any provision of Article 4 or 16 of Chapter 130A of the General Statutes or any rules or regulations promulgated under those Articles as amended from time to time.
- n. Indecent exposure or exhibition of a dead human body while in the custody or control of a licensee.

In any case in which the Board is entitled to suspend, revoke or refuse to renew a license, the Board may accept from the licensee an offer to pay a penalty of not more than five thousand dollars (\$5,000). The Board may either accept a penalty or revoke or refuse to renew a license, but not both.

- (2) Where the Board finds that a licensee is guilty of one or more of the acts or omissions listed in subdivision (e)(1) of this section but it is determined by the Board that the licensee has not thereby become unfit to practice, the Board may place the licensee on a term of probation in accordance with the procedures set out in Chapter 150B of the General Statutes. In any case in which the Board is entitled to place a licensee on a term of probation, the Board may also impose a penalty of not more than five thousand dollars (\$5,000) in conjunction with the probation. The Board may also require satisfactory completion of remedial or educational training as a prerequisite to license reinstatement or for completing the term of probation.

No person licensed under this Article shall remove or cause to be embalmed a dead human body when he or she has information indicating crime or violence of any sort in connection with the cause of death, nor shall a dead human body be cremated, until permission of the State or county medical examiner has first been obtained. However, nothing in this Article shall be construed to alter the duties and authority now vested in the office of the coroner.

1 No funeral service establishment shall accept a dead human body from any public
2 officer (excluding the State or county medical examiner or his agent), or employee or
3 from the official of any institution, hospital or nursing home, or from a physician or any
4 person having a professional relationship with a decedent, without having first made
5 due inquiry as to the desires of the persons who have the legal authority to direct the
6 disposition of the decedent's body. If any persons are found, their authority and
7 directions shall govern the disposal of the remains of the decedent. Any funeral service
8 establishment receiving the remains in violation of this subsection shall make no charge
9 for any service in connection with the remains prior to delivery of the remains as
10 stipulated by the persons having legal authority to direct the disposition of the body.
11 This section shall not prevent any funeral service establishment from charging and
12 being reimbursed for services rendered in connection with the removal of the remains of
13 any deceased person in case of accidental or violent death, and rendering necessary
14 professional services required until the persons having legal authority to direct the
15 disposition of the body have been notified.

16 When and where a licensee presents a selection of funeral merchandise to the public
17 to be used in connection with the service to be provided by the licensee or an
18 establishment as licensed under this Article, a card or brochure shall be directly
19 associated with each item of merchandise setting forth the price of the service using said
20 merchandise and listing the services and other merchandise included in the price, if any.
21 When there are separate prices for the merchandise and services, such cards or
22 brochures shall indicate the price of the merchandise and of the items separately priced.

23 At the time funeral arrangements are made and prior to the time of rendering the
24 service and providing the merchandise, a funeral director or funeral service licensee
25 shall give or cause to be given to the person or persons making such arrangements a
26 written statement duly signed by a licensee of said funeral establishment showing the
27 price of the service as selected and what services are included therein, the price of each
28 of the supplemental items of services or merchandise requested, and the amounts
29 involved for each of the items for which the funeral establishment will advance moneys
30 as an accommodation to the person making arrangements, insofar as any of the above
31 items can be specified at that time. If fees charged by a finance company for expediting
32 payment of life insurance proceeds to the establishment will be passed on to the person
33 or persons responsible for payment of the funeral expenses, information regarding the
34 fees, including the total dollar amount of the fee, shall be disclosed in writing. The
35 statement shall have printed, typed or stamped on the face thereof: "This statement of
36 disclosure is provided under the requirements of North Carolina G.S. 90-210.25(e)."
37 The Board may prescribe other disclosures that a licensee shall give to consumers upon
38 finding that the disclosure is necessary to protect public health, safety, and welfare.

39 (f) Unlawful Practices. – If any person shall practice or hold himself or herself
40 out as practicing the profession or art of embalming, funeral directing or practice of
41 funeral service or operating a funeral establishment without having complied with the
42 licensing provisions of this Article, ~~he~~ the person shall be guilty of a Class 2
43 misdemeanor.

(g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue an order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides."

SECTION 5. G.S. 90-210.27A reads as rewritten:

"§ 90-210.27A. Funeral establishments.

(a) Every funeral establishment shall contain a preparation room which is strictly private, of suitable size for the embalming of dead bodies. Each preparation room shall:

- (1) Contain one standard type operating table.
- (2) Contain facilities for adequate drainage.
- (3) Contain a sanitary waste receptacle.
- (4) Contain an instrument sterilizer.
- (5) Have wall-to-wall floor covering of tile, concrete, or other material which can be easily cleaned.
- (6) Be kept in sanitary condition and subject to inspection by the Board or its agents at all times.
- (7) Have a placard or sign on the door indicating that the preparation room is private.
- (8) Have a proper ventilation or purification system to maintain a nonhazardous level of airborne contamination.

(b) No one is allowed in the preparation room while a dead human body is being prepared except licensees, resident trainees, public officials in the discharge of their duties, members of the medical profession, officials of the funeral home, next of kin, or other legally authorized persons.

(c) Every funeral establishment shall contain a repose room for dead human bodies, of suitable size to accommodate a casket and visitors.

(d) Repealed by Session Laws 1997-399, s. 14.

(e) If a funeral establishment is solely owned by a natural person, that person must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a partnership, at least one partner must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a corporation, the president, vice-president, or the chairman of the board of directors must be licensed by the Board as a funeral director or a funeral service licensee. If it is owned by a limited liability company, at least one member must be licensed by the Board as a funeral director or a funeral service licensee. The licensee required by this subsection must be actively engaged in the operation of the funeral establishment.

(f) If a funeral establishment uses the name of a living person in the name under which it does business, that person must be licensed by the Board as a funeral director or a funeral service licensee.

(g) No funeral establishment ~~or other licensee under this Article~~ shall own, operate, or maintain a ~~funeral~~ chapel without first having registered the name, location, and ownership thereof with the Board; own or maintain more than two ~~funeral~~ chapels, or own or maintain a ~~funeral~~ chapel outside of a radius of 50 miles from the funeral establishment. A duly licensed person may use a ~~funeral~~ chapel for making arrangements for funeral ~~service, services, selling funeral supplies-merchandise~~ to the ~~public, public by photograph, video, or computer based presentation~~, or making financial arrangements for the rendering of ~~such-the~~ service or sale of supplies, provided that ~~such-the~~ uses are secondary and incidental to and do not interfere with the reposing of dead human bodies, visitation, or funeral ceremony.

(h) All public health laws and rules apply to funeral establishments. In addition, all funeral establishments must comply with all of the standards established by the rules adopted by the Board.

(i) No funeral establishment shall use an unregistered or misleading name. Misleading names include, but are not limited to, names in the plural form when there is only one funeral ~~establishment-establishment, the use of names of deceased individuals, unless the establishment is licensed using the name at the time the new application is made, the use of names of individuals not associated with the establishment~~, and the use of the word "crematory" or "crematorium" in the name of a funeral establishment that does not own a crematory. If an owner of a funeral establishment owns more than one funeral establishment, the owner may not use the word "crematory" or "crematorium" in the name of more than one of its funeral establishments; except that each funeral home having a crematory on the premises may contain the term "crematory" or "crematorium" in its name.

(j) A funeral establishment will not use any name other than the name by which it is properly registered with the Board."

SECTION 6. G.S. 90-210.28 reads as rewritten:

"§ 90-210.28. Fees.

The Board may set and collect fees, not to exceed the following amounts:

Establishment permit

Application	\$250.00 <u>\$400.00</u>
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Annual renewal	150.00 <u>250.00</u>
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Late renewal	100.00 <u>150.00</u>
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Establishment and embalming facility inspection-reinspection fee	100.00
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Courtesy card

Application	75.00 <u>100.00</u>
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Annual renewal	50.00 <u>75.00</u>
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Out-of-state licensee

Application	200.00 <u>250.00</u>
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Embalmer, funeral director, funeral service

Application-North

1	Carolina-Resident	150.00	200.00
2	-Non-Resident	200.00	250.00
3	Annual Renewal-embalmer or		
4	funeral director	40.00	75.00
5	Total fee, embalmer and funeral director		
6	when both are held by the same person	60.00	100.00
7	-funeral service	60.00	100.00
8	Inactive Status		50.00
9	Reinstatement fee		50.00
10	Resident trainee permit		
11	Application		50.00
12	Voluntary change in supervisor		50.00
13	Annual renewal		35.00
14	Late renewal		25.00
15	Duplicate license certificate		25.00
16	Chapel registration		
17	Application	150.00	
18	Annual renewal	100.00	
19	Late renewal	75.00	

20 The Board shall provide, without charge, one copy of the current statutes and
 21 regulations relating to ~~Mortuary Science~~ Funeral Service to every person applying for
 22 and paying the appropriate fees for licensing pursuant to this Article. The Board may
 23 charge all others requesting copies of the current statutes and regulations, and the
 24 licensees or applicants requesting additional copies, a fee equal to the costs of
 25 production and distribution of the requested documents."

26 **SECTION 7.** Article 13A of Chapter 90 of the General Statutes is amended
 27 by adding a new section to read:

28 **"§ 90-210.29A-1. Examination scores not public record.**

29 The examination scores of applicants for licensure shall not be subject to the
 30 provisions of Chapter 132 of the General Statutes. The Board shall release to any person
 31 requesting examination scores whether or not the applicant has obtained a passing score
 32 at the time of the request."

33 **SECTION 8.** G.S. 90-210.62 reads as rewritten:

34 **"§ 90-210.62. Types of preneed funeral contracts; forms.**

35 (a) A preneed licensee may offer standard preneed funeral contracts and
 36 inflation-proof preneed funeral contracts. A standard preneed funeral contract applies
 37 the trust funds or insurance proceeds to the purchase price of funeral services and
 38 merchandise at the time of death of the contract beneficiary without a
 39 guarantee protection against potential future price increases. An inflation-proof contract
 40 establishes a fixed price an agreement between the preneed licensee and the purchaser
 41 for funeral services and merchandise without regard to potential future price increases.
 42 Upon written disclosure to the purchaser of a preneed funeral contract, inflation-proof
 43 contracts may permit the preneed licensee to retain all of the preneed funeral contract
 44 trust funds on deposit, and all insurance proceeds, even those in excess of the retail cost

1 of goods and services provided, when the preneed licensee has fully performed the
2 preneed funeral contract. Preneed funeral contracts may be revocable or irrevocable, at
3 the option of the preneed funeral contract purchaser.

4 (b) The Board ~~shall approve all~~ may prescribe forms for preneed funeral
5 ~~contracts. contracts consistent with this Article. All contracts must be in writing, and no~~
6 ~~form shall be used without prior approval of the Board. writing on forms prescribed by~~
7 the Board. Any use or attempted use of any oral preneed funeral contract or any written
8 contract in a form not ~~approved~~ prescribed by the Board shall be deemed a violation of
9 this Article."

10 SECTION 9. Article 13D of Chapter 90 of the General Statutes is amended
11 by adding a new section to read:

12 "**§ 90-210.63A. Amendment of preneed funeral contracts.**

13 (a) Unless otherwise provided by this Article, preneed funeral contracts may be
14 modified by mutual consent of the contracting preneed funeral establishment and the
15 preneed contract purchaser, or after the death of the preneed contract purchaser, the
16 preneed contract beneficiary or his or her legal representative.

17 (b) When the preneed contract purchaser and preneed contract beneficiary are the
18 same, the preneed contract purchaser may designate one or more individuals to change
19 the arrangements or performing funeral establishment, or may designate that the
20 arrangements or performing funeral establishment may not be changed without an order
21 from the clerk of superior court in the county where probate proceedings are instituted
22 upon a finding that the change is in the best interest of the estate.

23 (c) If the preneed purchaser, or after his or her death, the preneed contract
24 beneficiary or his or her legal representative, and the contracting preneed funeral
25 establishment agree to modify any goods or services selected under an inflation-proof
26 contract, the preneed licensee shall not be required to guarantee the price of the
27 modified goods and services at the time of death and all other funeral goods and service
28 selected shall remain guaranteed. If the modifications increase the purchase price, the
29 provisions of G.S. 90-210.64(b) shall apply as if the modified contract had been
30 executed on the original date. If the modifications decrease the purchase price, the
31 preneed licensee shall refund all monies according to the provisions of
32 G.S. 90-210.64(d)."

33 SECTION 10. G.S. 90-210.64 reads as rewritten:

34 "**§ 90-210.64. Death of preneed funeral contract beneficiary; disposition of funds.**

35 (a) After the death of a preneed funeral contract beneficiary and full performance
36 of the preneed funeral contract by the preneed licensee, the preneed licensee shall
37 promptly complete a certificate of performance and present it to the financial institution
38 that holds funds in trust under G.S. 90-210.61(a)(1) or to the insurance company that
39 issued a preneed insurance policy pursuant to G.S. 90-210.61(a)(3). Upon receipt of the
40 certificate of performance or similar claim form, the financial institution shall pay the
41 trust funds to the contracting preneed licensee and the insurance company shall pay the
42 insurance proceeds according to the terms of the policy. Within 10 days after receiving
43 payment, the preneed licensee shall ~~mail~~ file a copy of the certificate of performance or
44 other claim form to the Board.

(b) Unless otherwise specified in the preneed funeral contract, the preneed licensee shall have no obligation to deliver merchandise or perform any services for which payment in full has not yet been deposited with a financial institution or that will not be provided by the proceeds of a prearrangement insurance policy. Any such amounts received which do not constitute payment in full shall be refunded to the estate of the deceased preneed funeral contract beneficiary or credited against the cost of merchandise or services contracted for by a representative of the deceased. Any balance remaining after payment for the merchandise and services as set forth in the preneed funeral contract shall be paid to the estate of the preneed funeral contract beneficiary or the prearrangement insurance policy beneficiary named to receive any such balance. Provided, however, unless the parties agree to the contrary, there shall be no refund to the estate of the preneed funeral contract beneficiary of an inflation-proof preneed funeral ~~contract~~ contract except as required by G.S. 90-210.63A(c).

(c) In the event that any person other than the contracting preneed licensee performs any funeral service or provides any merchandise as a result of the death of the preneed funeral contract beneficiary, the financial institution shall pay the trust funds to the contracting preneed licensee and the insurance company shall pay the insurance proceeds according to the terms of the policy. The preneed licensee shall, subject to the provisions of G.S. 90-210.65(d), immediately pay the monies so received to the other provider.

(d) When the balance of a preneed funeral fund is one hundred dollars (\$100.00) or less and is payable to the estate of a deceased preneed funeral contract beneficiary and there has been no representative of the estate appointed, the balance due may be paid directly to a beneficiary or to the beneficiaries of the estate. If the balance of a preneed funeral fund exceeds one hundred dollars (\$100.00) or is not payable to the estate, the balance must be paid into the office of the clerk of superior court in the county where probate proceedings could be filed for the deceased preneed funeral contract beneficiary.

(e) Upon the fulfillment of a preneed contract, all of the following items shall be completed within 30 days:

- (1) The contracting preneed licensee must submit a certificate of performance or similar claim form to the financial institution holding the preneed trust funds and close the preneed account.
- (2) The proceeds of this trust account shall be distributed according to the terms of the preneed contract.
- (3) A completed copy of the certificate of performance or similar claim form evidencing the final disposition of any financial institution preneed trust account funds must be filed with the Board by the contracting licensee."

SECTION 11. G.S. 90-210.65(e) reads as rewritten:

"(e) This section shall not apply to irrevocable preneed funeral contracts. Irrevocable preneed funeral contracts may ~~not only~~ be revoked ~~nor or~~ any proceeds refunded ~~except by~~ by the order of a court of competent jurisdiction, except as follows:

(1) The Board may order an irrevocable contract revoked when the preneed contract beneficiary is no longer domiciled in this State and has submitted a written copy to the Board of a new preneed funeral contract executed under the laws of the state where the preneed contract beneficiary is domiciled. Upon receipt of the Board's order, the original contracting preneed licensee shall immediately follow the provisions of G.S. 90-210.63 to transfer the funds to the successor firm.

(2) ~~Notwithstanding the previous sentence, irrevocable~~ Irrevocable preneed funeral contracts purchased pursuant to G.S. 90-210.61(a)(3) shall also be revocable when the underlying insurance policy lapses or is otherwise cancelled and the lapsed or cancelled policy no longer provides any funding for the preneed funeral contract."

SECTION 12. G.S. 90-210.67(b) reads as rewritten:

"(b) An application for a preneed funeral establishment license shall be accompanied by a nonrefundable application fee of not more than ~~one hundred fifty dollars (\$150.00).~~ four hundred dollars (\$400.00). The Board shall set the amounts of the application fees ~~and renewal fees by rule, but the fees shall not exceed one hundred fifty dollars (\$150.00).~~ and renewal fees, by rule. A funeral establishment receiving a new preneed establishment license after January 1, 2008, or whose preneed establishment license has lapsed or was terminated for any reason after January 1, 2008, shall obtain a surety bond in an amount not less than fifty thousand dollars (\$50,000) for five years, or upon demonstrating that it is solvent, no less than one year from the date the original license is issued. The Board may extend the bonding requirement in the event there is a claim paid from the bond.

If the license is granted, the application fee shall be applied to the annual license fee for the first year or part thereof. Upon receipt of the application and payment of the application fee, the Board shall issue a renewable preneed funeral establishment license unless it determines that the applicant has violated any provision of G.S. 90-210.69(c) or has made false statements or representations in the application, or is insolvent, or has conducted or is about to conduct, its business in a fraudulent manner, or is not duly authorized to transact business in this State. The license shall expire on December 31 and each preneed funeral establishment licensee shall pay annually to the Board on or before that date a license renewal fee of not more than ~~one hundred fifty dollars (\$150.00).~~ two hundred fifty dollars (\$250.00). On or before the first day of February immediately following expiration, a license may be renewed without paying a late fee. After that date, a license may be renewed by paying a late fee of not more than one hundred dollars (\$100.00) in addition to the annual renewal fee."

SECTION 13. G.S. 90-210.68(d) reads as rewritten:

"(d) Financial institutions that accept preneed funeral trust funds and insurance companies that issue prearrangement insurance policies shall, upon request by the Board or its inspectors or examiners, disclose any information regarding preneed funeral trust accounts held or prearrangement insurance policies issued by it for a preneed licensee.

1 Financial institutions that accept preneed funeral trust funds and insurance
2 companies that assign policy proceeds or designate a preneed funeral establishment as
3 beneficiary shall also forward an account balance to the contracting preneed funeral
4 establishment at the end of each calendar year."

5 **SECTION 14.** G.S. 90-210.68(e) reads as rewritten:

6 "(e) In the event that any preneed licensee is unable or unwilling or is for any
7 reason relieved of its responsibility to perform as trustee or to perform any preneed
8 funeral contract, the Board, ~~with the written consent of the purchaser of the preneed~~
9 ~~funeral contract, or after the purchaser's death or incapacity, the preneed funeral contract~~
10 ~~beneficiary~~ Board shall order the contract and any amounts retained pursuant to
11 G.S. 90-210.61(a)(2) to be assigned to a substitute preneed licensee provided that the
12 ~~substitute licensee agrees to accept such assignment.~~ neither the substitute preneed
13 licensee or preneed contract purchaser, or after the death of the preneed contract
14 purchaser, the preneed contract beneficiary or his or her legal representative, shall be
15 obligated to perform the agreement without executing a new preneed funeral contract.
16 Any lapse or transfer of a preneed contract pursuant to this section shall not be grounds
17 to revoke an irrevocable preneed funeral contract."

18 **SECTION 15.** G.S. 90-210.69(c) reads as rewritten:

19 "(c) In accordance with the provisions of Chapter 150B of the General Statutes, if
20 the Board finds that a licensee, an applicant for a license or an applicant for license
21 renewal is guilty of one or more of the following, the Board may refuse to issue or
22 renew a license or may suspend or revoke a license or place the holder thereof on
23 probation upon conditions set by the Board, with revocation upon failure to comply with
24 the conditions:

- 25 (1) Offering to engage or engaging in activities for which a license is
26 required under this Article but without having obtained such a license.
- 27 (2) Aiding or abetting an unlicensed person, firm, partnership, association,
28 corporation or other entity to offer to engage or engage in such
29 activities.
- 30 (3) A crime involving fraud or moral turpitude by conviction thereof.
- 31 (4) Fraud or misrepresentation in obtaining or receiving a license or in
32 preneed funeral planning.
- 33 (5) False or misleading advertising.
- 34 (6) Violating or cooperating with others to violate any provision of this
35 Article, the rules and regulations of the Board, or the standards set
36 forth in Funeral Industry Practices, 16 C.F.R. 453 (1984), as amended
37 from time to time.
- 38 (7) Denial, suspension, or revocation of an occupational or business
39 license by another jurisdiction.

40 In any case in which the Board is authorized to take any of the actions permitted
41 under this subsection, the Board may instead accept an offer in compromise of the
42 charges whereby the accused shall pay to the Board a penalty of not more than five
43 thousand dollars (\$5,000). In any case in which the Board is entitled to place a licensee

1 on a term of probation, the Board may also impose a penalty of not more than five
2 thousand dollars (\$5,000) in conjunction with such probation."

3 **SECTION 16.** G.S. 90-210.102 reads as rewritten:

4 **"§ 90-210.102. Hearing by Board of dispute over liability for funeral benefits;**
5 **appeal.**

6 In case of a disagreement between the representative of a deceased member of any
7 burial association and such deceased member's burial association a hearing may be held
8 by the Board of Funeral Service, on request of either party, to determine whether the
9 association is liable for the benefits set forth in the policy issued to the said deceased
10 member of said burial association. The Board of Funeral Service shall render a decision
11 which shall have the same force and effect as judgments rendered by courts of
12 competent jurisdiction in North Carolina. Either party may appeal from the decision of
13 the Board of Funeral Service. Appeal shall be to the district court division of the
14 General Court of Justice in the county in which the burial association is located. The
15 procedure for appeal shall be the same as the appeal procedure set forth in Article 19 of
16 Chapter 7A of the General Statutes of North Carolina regulating appeals from the
17 magistrate to the district court. ~~Upon appeal trial shall be de novo."~~

18 **SECTION 17.** G.S. 90-210.107 reads as rewritten:

19 **"§ 90-210.107. Acquisition, merger, dissolution, and liquidation of mutual burial**
20 **associations.**

21 (a) Any insurance company which desires to purchase the assets of or to merge
22 with a burial association as provided in G.S. 90-210.106 shall submit to the Board of
23 Funeral Service and to the secretary of the association a written proposal containing the
24 terms and conditions of the proposed purchase or merger. A proposal may be
25 conditioned upon an increase in the assessments of an association in the manner set out
26 in subsection (g) of this section. In such a case, the issues of purchase or merger and an
27 increase in assessments may be considered at the same meeting of the association.

28 (b) Upon receipt of a written proposal:

29 (1) The Board shall issue an order directing the association to hold a
30 meeting of the membership within 30 days following receipt of the
31 order for the purpose of voting on the proposal.

32 (2) Within 10 days of receiving the order from the Board, the association
33 shall give at least 10 days' written notice of the meeting to each of its
34 members. The notice shall:

35 a. State the date, time, and place of the meeting.

36 b. State the purpose of the meeting.

37 c. Contain or have attached the proposal submitted by the
38 insurance company.

39 d. Contain a statement limiting the time that each member will be
40 permitted to speak to the proposal, if the association deems it
41 advisable.

42 e. Contain a written proxy form and instructions concerning the
43 proxy prescribed by the Board.

(c) A representative of the insurance company shall be permitted to attend the meeting held by the association for the purposes of explaining the proposal and answering any questions from the members. The officers of the association may present their views concerning the proposal. Any member of the association who wishes to speak to the proposal shall be permitted to do so subject to any time limitation stated in the notice of the meeting.

(d) The secretary of the association shall record the name of every member who is present at the meeting or has issued a written proxy pursuant to G.S. 55A-7-24 and shall determine whether there is a quorum. The presence of 15 members or ten percent (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority vote of the members ~~present and~~ voting. Any member who is at least 18 years of age shall be permitted to vote. A parent or guardian of any member who is under 18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that member.

(e) The secretary of the association shall certify the result of the vote and the presence of a quorum to the Board within five days following the meeting and shall include with the certification a copy of the notice of the meeting that was sent to the members of the association.

(f) The Board shall immediately review the certification, the notice, and any other records that may be necessary to determine the adequacy of notice, the presence of a quorum, and the validity of the vote. Upon determining that the meeting and vote were regular and held following proper notice and that a majority of a quorum of the members voted in favor of the proposal, the Board shall issue an order approving the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

(g) Any burial association whose current assessments are not, or are unlikely to be within the next three years, adequate to reach or maintain a reserve of at least twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association may increase its assessments by an amount necessary to reach and maintain the reserve or to meet the proposal. The increase shall be approved by a vote of the members of the association at a regular meeting of the association or at a special meeting called for the purpose of increasing assessments.

(1) Any officer or director of the association may call a special meeting for the purpose of increasing assessments, and the secretary shall call a special meeting for such purpose upon the request of at least ten percent (10%) of the members or upon receipt of a proposal from an insurance company that is conditioned upon an increase in assessments.

(2) Written notice setting out the date, time, place, and the purpose of the meeting shall be hand delivered or sent by first-class mail, postage prepaid, to the last known address of each member of the association at least 10 days in advance of the meeting.

1 (3) No vote may be had on the question of an increase in assessments
2 unless a quorum of the members of the association is present at the
3 meeting. A quorum shall be conclusively presumed if 15 members or
4 ten percent (10%) of the membership of the association, whichever is
5 greater, is present at the meeting.

6 (4) The proposal to increase the assessments shall be approved by an
7 affirmative vote of a majority of the members present and voting.

8 (5) The secretary of the association within five days following the meeting
9 shall certify the result of the vote and the presence of a quorum to the
10 Board in the manner and for the purposes set out in subsections (e) and
11 (f) of this section.

12 (h) Upon a written request from an association that has held a valid meeting and
13 voted for voluntary dissolution in accordance with G.S. 90-210.81, the Board shall issue
14 an order of liquidation for that association.

15 (i) Upon receipt of a request for voluntary dissolution under subsection ~~(h)~~, (h) of
16 this section or if the sponsoring funeral establishment has its permit revoked or ceases
17 operation for any reason, the Board shall issue an order of liquidation. The Board's
18 order may direct that the agreements for members' benefits be transferred to a
19 financially sound mutual burial association, as well as all records, property, and
20 unexpended balances of funds of the association to be liquidated, if the financially
21 sound mutual burial association agrees in writing to accept the transfer. The Board's
22 order shall direct the burial association to complete the liquidation and to file a final
23 report with the Board no later than December 31 of the year of the liquidation. Upon
24 receipt of the order of liquidation, the burial association shall:

25 (1) Cease accepting new members.

26 (2) Collect all debts owed to the association and pay all debts owed by the
27 association from monies on hand, including the reserve.

28 (3) Distribute pro rata any remaining monies on hand and in the reserve
29 among those who were members of the association and whose transfer
30 could not be accomplished on the date that the liquidation order was
31 issued by the Board. Each member's distributive share shall be
32 determined by dividing the amount of the member's benefit by the
33 aggregate benefits of all members of the association and then
34 multiplying the total amount of money available for distribution by the
35 percentage so derived. Assessments owed by the members to the
36 association at the time of distribution shall be taken into account and
37 shall be offset against the members' distributive shares.

38 (4) Issue a certificate to members in an amount that equals the difference
39 between the distributive share issued in subdivision (3) of this
40 subsection and the full amount of the member's association benefit.
41 Any certificate issued shall supersede and supplant any other
42 certificate already issued by the association. The certificate shall be on
43 a form prescribed by the Board and shall be prepared and distributed
44 by the association at its expense.

(5) File a final report with the Board on or before December 31 in the year in which the order of liquidation was issued. This report shall show all receipts and disbursements, including the amount distributed to each member, since the last annual report of the association was filed with the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 90-210.84 are automatically cancelled."

SECTION 18. G.S. 90-210.121 reads as rewritten:

"§ 90-210.121. Definitions.

As used in this Article, unless the context requires otherwise:

(1) "Authorizing agent" means a person legally entitled to authorize the cremation of human remains in accordance with G.S. 90-210.124.

(2) "Board" means the North Carolina Board of Funeral Service.

(3) "Body parts" means limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research; or human bodies or any portion thereof that have been donated to science for medical purposes.

(4) "Casket" means a rigid container that is designed for the encasement of human remains and that is usually constructed of wood, metal, or other material and ornamented and lined with fabric, and which may or may not be combustible.

(5) "Certificate of cremation" means a certificate provided by the crematory manager who performed the cremation containing, at a minimum, the following information:

- a. Name of decedent;
- b. Date of cremation;
- c. Name and address of crematory; and
- d. Signature of crematory manager or person acting as crematory manager.

(6) "Cremated remains" means all human remains recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions.

- 1 (7) "Cremation" means the technical process, using intense heat and
2 flame, that reduces human remains to bone fragments. Cremation
3 includes the processing and may include the pulverization of the bone
4 fragments.
- 5 (8) "Cremation chamber" means the enclosed space within which the
6 cremation process takes place. Cremation chambers covered by this
7 Article shall be used exclusively for the cremation of human remains.
- 8 (9) "Cremation container" means the container in which the human
9 remains are transported to the crematory or placed therein upon arrival
10 for storage and placement in a cremation chamber for cremation. A
11 cremation container shall comply with all of the following standards:
12 a. Be composed of readily combustible materials suitable for
13 cremation;
14 b. Be able to be closed in order to provide a complete covering for
15 the human remains;
16 c. Be resistant to leakage or spillage;
17 d. Be rigid enough for handling with ease;
18 e. Be able to provide protection for the health, safety, and personal
19 integrity of crematory personnel; and
20 f. Be easily identifiable. The covering of the cremation container
21 shall contain the following information:
22 1. The name of the decedent;
23 2. The date of death;
24 3. The sex of the decedent; and
25 4. The age at death of the decedent.
- 26 (10) "Cremation interment container" means a rigid outer container
27 composed of concrete, steel, fiberglass, or some similar material in
28 which an urn is placed prior to being interred in the ground and which
29 is designed to withstand prolonged exposure to the elements and to
30 support the earth above the urn.
- 31 (11) "Crematory" or "crematorium" means the building or buildings or
32 portion of a building on a single site that houses the cremation
33 equipment, the holding and processing facilities, the business office,
34 and other parts of the crematory business. A crematory must comply
35 with all applicable public health and environmental laws and rules and
36 must contain the equipment and meet all of the standards established
37 by the rules adopted by the Board.
- 38 (12) "Crematory licensee" means the individual or legal entity that is
39 licensed by the Board to operate a crematory and perform cremations.
- 40 (13) "Crematory manager" means the person who is responsible for the
41 management and operation of the crematory. A crematory manager
42 must either be licensed to practice funeral directing or funeral service
43 and be qualified as a crematory technician or must obtain a crematory

manager permit issued by the Board. In order to receive a crematory manager permit, a person must:

- a. Be at least 18 years of age.
- b. Be of good moral character.
- c. Be qualified as a crematory technician.

Notwithstanding any other provision of law, a crematory that is licensed by the Board prior to January 1, 2004, and as of that date is not managed by a crematory manager who is licensed to practice funeral directing or funeral service, or who has a crematory manager permit, may continue to be managed by a crematory manager who is not licensed to practice funeral directing or funeral service or who does not have a crematory manager permit so long as there is no sale, transfer, devise, bequest, gift, or any other disposal of a controlling interest in the crematory.

(13a) "Cremation society" means any person, firm, corporation, or organization that is affiliated with a crematory licensed under this Article and provides cremation information to consumers.

(14) "Crematory technician" means any employee of a crematory licensee who has a certificate confirming that the crematory technician has attended a training course approved by the Board. The Board shall recognize the cremation certificate program that is conducted by the Cremation Association of North America (CANA).

(15) "Final disposition" means the cremation and the ultimate interment, entombment, inurnment, or scattering of the cremated remains or the return of the cremated remains by the crematory licensee to the authorizing agent or such agent's designee as provided in this Article. Upon the written direction of the authorizing agent, cremated remains may take various forms.

(16) "Holding and processing facility" means an area or areas that are designated for the retention of human remains prior to, and the retention and processing of cremated remains after, cremation; that comply with all applicable public health and environmental laws; preserve the health and safety of the crematory technician and other personnel of the crematory; and that are secure from access by anyone other than authorized persons. A holding facility and processing facility must be located in a crematory.

(17) "Human remains" means the body of a deceased person, including a separate human fetus, regardless of the length of gestation, or body parts.

(17a) "Initial container" means a receptacle for cremated remains, for which the intended use and design is to hold cremated remains, usually composed of cardboard, plastic, or similar material that can be closed in a manner so as to prevent the leakage or spillage of the cremated

remains or the entrance of foreign material and is a single container of sufficient size to hold the cremated remains.

(18) "Niche" means a compartment or cubicle for the memorialization or final disposition of an urn or container containing cremated remains.

(19) "Processing" means the removal of bone fragments from the cremation chamber for the reduction in size, labeling and packaging, and placing in an urn or ~~temporary~~ initial container.

(20) "Pulverization" means the reduction of identifiable or unidentifiable bone fragments after the completion of the cremation to granulated particles by mechanical means.

(21) "Scattering area" means an area permitted by North Carolina law including, but not limited to, an area designated by a cemetery and located on dedicated cemetery property where cremated remains that have been removed from their container can be mixed with or placed on top of the soil or ground cover.

(22) ~~"Temporary container" means a receptacle for cremated remains, usually composed of cardboard, plastic, or similar material which can be closed in a manner so as to prevent the leakage or spillage of the cremated remains or the entrance of foreign material and which is a single container of sufficient size to hold the cremated remains until an urn is acquired or the cremated remains are scattered.~~

(23) "Urn" means a receptacle designed to permanently encase the cremated remains."

SECTION 19. G.S. 90-210.122(c) reads as rewritten:

"(c) The initial terms of the members of the Crematory Authority shall be staggered by the appointing authorities so that the terms of three members (two of which shall be appointees of the Governor) expire December 31, 1991, the terms of two members (both of which shall be appointees of the Governor) expire December 31, 1992, and the terms of the remaining two members (one of which shall be an appointee of the Governor) expire December 31, 1993.

As the terms of the members appointed by the Governor expire, their successors shall be elected from among a list of nominees in an election conducted by the Board in which all licensed crematory operators are eligible to vote. The Board ~~may~~ shall conduct the election for members of the Crematory Authority ~~simultaneously with the election for members of the Board or at any other time.~~ The Board and shall prescribe the procedures and establish the time and date for nominations and elections to the Crematory Authority. A nominee who receives a majority of the votes cast shall be declared elected. The Board shall appoint the successors to the two positions for which it makes initial appointments pursuant to this section.

The terms of the elected members of the Crematory Authority shall be three years. The terms of the members appointed by the Board, including the members initially appointed pursuant to this subsection, shall be coterminous with their terms on the Board. Any vacancy occurring in an elective seat shall be filled for the unexpired term by majority vote of the remaining members of the Crematory Authority. Any vacancy

1 occurring in a seat appointed by the Governor shall be filled by the Governor. Any
2 vacancy occurring in a seat appointed by the Board shall be filled by the Board."

3 **SECTION 20.** G.S. 90-210.123(g) is amended by adding a new subdivision
4 to read:

5 "(g) Whenever the Board finds that an owner, partner, crematory manager,
6 member, officer, or any crematory technician of a crematory licensee or any applicant to
7 become a crematory licensee, or that any authorized employee, agent, or representative
8 has violated any provision of this Article, or is guilty of any of the following acts, and
9 when the Board also finds that the crematory operator or applicant has thereby become
10 unfit to practice, the Board may suspend, revoke, or refuse to issue or renew the license,
11 in accordance with Chapter 150B of the General Statutes:

12 ...

13 (1a) Denial, suspension, or revocation of an occupational or business
14 license by another jurisdiction.

15"

16 **SECTION 21.** G.S. 90-210.123(i) reads as rewritten:

17 "(i) The Board may hold hearings in accordance with the provisions of this
18 Article and Chapter 150B of the General Statutes. The Board shall conduct any such
19 hearing. The Board shall constitute an "agency" under Article 3A of Chapter 150B of
20 the General Statutes with respect to proceedings initiated pursuant to this Article. The
21 Board is empowered to regulate and inspect crematories and crematory licensees and to
22 enforce as provided by law the provisions of this Article and the rules adopted
23 hereunder. Any crematory that, upon inspection, is found not to meet any of the
24 requirements of this Article shall pay a reinspection fee to the Board for each additional
25 inspection that is made to ascertain whether the deficiency or other violation has been
26 corrected. The Board may obtain preliminary and final injunctions whenever a violation
27 of this Article has occurred or threatens to occur.

28 In addition to the powers enumerated in Chapter 150B of the General Statutes, the
29 Board shall have the power to administer oaths and issue subpoenas requiring the
30 attendance of persons and the production of papers and records before the Board in any
31 hearing, investigation, or proceeding conducted by it. Members of the Board's staff or
32 the sheriff or other appropriate official of any county of this State shall serve all notices,
33 subpoenas, and other papers given to them by the President of the Board for service in
34 the same manner as process issued by any court of record. Any person who neglects or
35 refuses to obey a subpoena issued by the Board shall be guilty of a Class 1
36 misdemeanor."

37 **SECTION 22.** G.S. 90-210.124(a) reads as rewritten:

38 "**§ 90-210.124. Authorizing agent.**

39 (a) The following person, in the priority list below, shall have the right to serve
40 as an "authorizing agent":

41 (1) ~~An individual at least 18 years of age may authorize the cremation and~~
42 ~~disposition of the individual's own dead body in a written will,~~
43 ~~pursuant to health care power of attorney to the extent provided in~~
44 ~~Article 3 of Chapter 32 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 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. An individual at least 18 years of age may authorize the type, place, and method of disposition of the individual's own dead body by methods in the following order:~~

- a. Pursuant to a preneed funeral contract executed pursuant to Article 13D of Chapter 90 of the General Statutes or pursuant to a cremation authorization form executed pursuant to Article 13C of Chapter 90 of the General Statutes.
- b. Pursuant to a written will.
- c. Pursuant to a written statement other than a will signed by the individual and witnessed by two persons who are at least 18 years old.
- d. Pursuant to a health care power of attorney to the extent provided in Article 3 of Chapter 32A of the General Statutes.

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.

- (2) If a decedent has left no written authorization for the cremation and disposition of the decedent's body as permitted under subdivision (1) of this subsection, the following competent persons in the order listed may authorize the type, method, place, cremation, and disposition of the decedent's body:

- a. The surviving spouse.
- b. A majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts.
- c. The surviving parents.
- d. A majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts.
- e. 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.
- f. A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the cremation and disposition.
- g. 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 may serve as the authorizing agent.

h. In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of such institution may serve as the authorizing agent in the absence of any of the above.

i. In the absence of any of the above, any person willing to assume responsibility as authorizing agent, as specified in this act.

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 cause or prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63-90-210.63 or permit modification of preneed contracts under G.S. 90-210.63A. If a person under this subsection is incompetent at the time of the decedent's death, the person shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of a person and the certification shall apply to the rights under this subsection only. Any person under this subsection may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses."

SECTION 23. G.S. 90-210.129 reads as rewritten:

"§ 90-210.129. Cremation procedures.

(a) In deaths certified by the attending physician, the body shall not be cremated before the crematory licensee receives a death certificate signed by the attending physician, which shall contain at a minimum the following information:

- (1) Decedent's name;
- (2) Date of death;
- (3) Date of birth;
- (4) Sex;
- (5) Place of death;
- (6) Facility name (if not institution, give street and number);
- (7) County of death;
- (8) City of death; and
- (9) Time of death (if known).

(b) When required by G.S. 130A-388 and the rules adopted pursuant to that section or by successor statute and the rules pursuant to it, a cremation authorization form signed by a medical examiner shall be received by the crematory prior to cremation.

(c) In deaths coming under full investigation by the Office of the Chief Medical Examiner, a burial-transit permit/cremation authorization form must be received by the crematory before cremation.

(d) No body shall knowingly be cremated with a pacemaker or defibrillator or other potentially hazardous implant or condition in place. The authorizing agent for the

1 cremation of the human remains shall be responsible for taking all necessary steps to
2 ensure that any pacemaker or defibrillator or other potentially hazardous implant or
3 condition is removed or corrected prior to cremation. If an authorizing agent informs the
4 funeral director and the crematory licensee on the cremation authorization form of the
5 presence of a pacemaker or defibrillator or other potentially hazardous implant or
6 condition in the human remains, then the funeral director shall be responsible for
7 ensuring that all necessary steps have been taken to remove the pacemaker or
8 defibrillator or other potentially hazardous implant or to correct the hazardous condition
9 before delivering the human remains to the crematory.

10 (e) Human remains shall not be cremated within 24 hours after the time of death,
11 unless such death was a result of an infectious, contagious, or communicable and
12 dangerous disease as listed by the Commission of Health Services, pursuant to
13 G.S. 130A-134, and unless such time requirement is waived in writing by the medical
14 examiner, county health director, or attending physician where the death occurred.

15 (f) No unauthorized person shall be permitted in view of the cremation chamber
16 or in the holding and processing facility while any human remains are being removed
17 from the cremation container, processed, or pulverized. Relatives of the deceased and
18 their invitees, the authorizing agent and the agent's invitees, medical examiners,
19 Inspectors of the North Carolina Board of Funeral Service, and law enforcement
20 officers in the execution of their duties shall be authorized to have access to the
21 crematory area, subject to the rules adopted by the crematory licensee governing the
22 safety of such individuals.

23 (g) Human remains shall be cremated only while enclosed in a cremation
24 container. Upon completion of the cremation, and insofar as is possible, all of the
25 recoverable residue of the cremation process shall be removed from the cremation
26 chamber. Insofar as is possible, all residue of the cremation process shall then be
27 separated from any foreign residue or anything else other than bone fragments and then
28 be processed by pulverization so as to reduce the cremated remains to unidentifiable
29 particles. Any foreign residue and anything other than the particles of the cremated
30 remains shall be removed from the cremated remains as far as possible and shall be
31 disposed of by the crematory licensee. This section does not apply where law otherwise
32 provides for commingling of human remains. The fact that there is incidental and
33 unavoidable residue in the cremation chamber used in a prior cremation is not a
34 violation of this subsection.

35 (h) The simultaneous cremation of the human remains of more than one person
36 within the same cremation chamber is forbidden.

37 (i) Every crematory shall have a holding and processing facility, within the
38 crematory, designated for the retention of human remains prior to cremation. The
39 holding and processing facility must comply with any applicable public health laws and
40 rules and must meet all of the standards established pursuant to rules adopted by the
41 Board.

42 (j) Crematory licensees shall comply with standards established by the Board for
43 the processing and pulverization of human remains by cremation.

1 (k) Nothing in this Article shall require a crematory licensee to perform a
2 cremation that is impossible or impractical to perform.

3 (l) The cremated remains with proper identification shall be placed in a
4 ~~temporary~~ initial container or the urn selected or provided by the authorizing agent.
5 The ~~temporary~~ initial container or urn contents shall not be contaminated with any other
6 object, unless specific authorization has been received from the authorizing agent or as
7 provided in subsection (g) of this section.

8 (m) If the cremated remains are greater than the dimensions of a ~~temporary~~ initial
9 container or urn, the excess cremated remains shall be returned to the authorizing
10 agent or its representative in a separate container or urn.

11 (n) If the cremated remains are to be shipped, the ~~temporary~~ initial container or
12 urn shall be packed securely in a suitable shipping container that complies with the
13 requirements of the shipper. Cremated remains shall be shipped only by a method which
14 has an internal tracing system available and which provides a receipt signed by the
15 person accepting delivery, unless otherwise authorized in writing by the authorizing
16 agent. Cremated remains shall be shipped to the proper address as stated on the
17 cremation authorization form signed by the authorizing agent.

18 (o) Unless the death falls under the jurisdiction of the Medical Examiner, before
19 the cremation of fetal remains of less than 20 weeks gestation, the crematory licensee
20 shall receive a written statement, on a form prescribed by the Board and signed by the
21 attending physician, acknowledging the circumstances, date, and time of the delivery of
22 the fetal remains from the mother. If after reasonable efforts no physician can be
23 identified with knowledge and information sufficient to complete the written statement
24 required by this subsection, the crematory licensee shall obtain documentation of the
25 circumstances, date, and time of delivery of the fetal remains prepared by a hospital,
26 medical facility, law enforcement agency, or other entity. Notwithstanding any other
27 provision of law, health care providers may release to a licensee, in accordance with the
28 federal Standards for Privacy of Individually Identifiable Health Information under the
29 Health Insurance Portability and Accountability Act of 1996 (HIPAA), medical records
30 that document the circumstances, date, and time of delivery of fetal remains. If the
31 crematory licensee cannot identify documents sufficient to meet the requirements of this
32 subsection, the licensee shall report the fetal death to the local medical examiner
33 pursuant to G.S. 130A-383(a).

34 (p) Before the cremation of fetal remains of 20 completed weeks gestation or
35 greater, the crematory licensee shall receive a fetal report of death as prescribed in
36 G.S.130A-114.

37 (q) Before the cremation of amputated body parts, the crematory licensee shall
38 receive a written statement, on a form prescribed by the Board and signed by the
39 attending physician, acknowledging the circumstances of the amputation. If after
40 reasonable efforts no physician can be identified with knowledge and information
41 sufficient to complete the written statement required by this subsection, the crematory
42 licensee shall notify the local medical examiner pursuant to G.S. 130A-383(b). This
43 section does not apply to the disposition of body parts cremated pursuant to Part 3 of
44 Article 16 of Chapter 130A of the General Statutes."

1 **SECTION 24.** G.S. 90-210.130(b) reads as rewritten:

2 "(b) The authorizing agent is responsible for the disposition of the cremated
3 remains. If, after a period of 30 days from the date of cremation, the authorizing agent
4 or the agent's representative has not specified the final disposition or claimed the
5 cremated remains, the crematory licensee or the person in possession of the cremated
6 remains may release the cremated remains to another family member upon written
7 notification to the authorizing agent delivered by certified mail or dispose of the
8 cremated remains only in a manner permitted in this section. The authorizing agent shall
9 be responsible for reimbursing the crematory licensee for all reasonable expenses
10 incurred in disposing of the cremated remains pursuant to this section. A record of such
11 disposition shall be made and kept by the person making the disposition. Upon
12 disposing of cremated remains in accordance with this section, the crematory licensee or
13 person in possession of the cremated remains shall be discharged from any legal
14 obligation or liability concerning such cremated remains."

15 **SECTION 25.** Article 13F of Chapter 90 of the General Statutes is amended
16 by adding the following new section to read:

17 **"§ 90-210.135. Cremation societies.**

18 (a) No person, firm, or corporation licensed as a crematory under the provisions
19 of this Article may operate a cremation society without first registering the name of the
20 cremation society with the Board."

21 **SECTION 26.** G.S. 130A-420 reads as rewritten:

22 **"§ 130A-420. Authority to dispose of body or body parts.**

23 (a) An individual at least 18 years of age may authorize the type, place, and
24 method of disposition of the individual's own dead body in a written will, pursuant to a
25 health care power of attorney to the extent provided in Article 3 of Chapter 32A of the
26 General Statutes, pursuant to a preneed funeral contract executed pursuant to Article
27 13D of Chapter 90 of the General Statutes, pursuant to a cremation authorization form
28 executed pursuant to Article 13C of Chapter 90 of the General Statutes, or in a written
29 statement signed by the individual and witnessed by two persons who are at least 18
30 years old by methods in the following order:

31 (1) Pursuant to a preneed funeral contract executed pursuant to Article
32 13D of Chapter 90 of the General Statutes or pursuant to a cremation
33 authorization form executed pursuant to Article 13C of Chapter 90 of
34 the General Statutes.

35 (2) Pursuant to a written will.

36 (3) Pursuant to a written statement other than a will signed by the
37 individual and witnessed by two persons who are at least 18 years old.

38 (4) Pursuant to a health care power of attorney to the extent provided in
39 Article 3 of Chapter 32A of the General Statutes.

40 An individual may also delegate his or her right to dispose of his or her own dead
41 human body to any person by any means authorized in subdivisions (1) through (3) of
42 this subsection.

43 (b) If a decedent has left no written authorization for the disposal of the
44 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~~ children over 18 years of age, who can be located after reasonable efforts.
- (3) The surviving parents.
- (4) A majority of the surviving ~~siblings~~ siblings over 18 years of age, who can be located after reasonable efforts.
- (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~~ intestate who are at least 18 years of age and can be located after reasonable efforts.
- (6) A person who has exhibited special care and concern for the decedent and is willing and able to make decisions about the disposition.
- (7) 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.
- (8) In the case of individuals who have donated their bodies to science or whose death occurred in a nursing home or private institution and in which the institution is charged with making arrangements for the final disposition of the decedent, a representative of the institution.
- (9) In the absence of any of the persons described in subdivisions (1) through (8) of this subsection, any person willing to assume responsibility for the disposition of the body.

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 Statutes~~, to prohibit the substitution of a preneed licensee as authorized under G.S. 90-210.63-90-210.63, or to permit modification of preneed contracts under G.S. 90-210.63A. If an individual is incompetent at the time of the decedent's death, the individual shall be treated as if he or she predeceased the decedent. An attending physician may certify the incompetence of an individual and the certification shall apply to the rights under this section only. Any individual under this section may waive his or her rights under this subsection by any written statement notarized by a notary public or signed by two witnesses.

(b1) A person who does not exercise his or her right to dispose of the decedent's body under subsection (b) of this section within five days of notification or 10 days from the date of death, whichever is earlier, shall be deemed to have waived his or her right to authorize disposition of the decedent's body or contest disposition in accordance with this section.

(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

1 person listed in subsection (b) of this section may authorize the disposition as if the
2 individual was deceased.

3 (d) This section does not apply to the disposition of dead human bodies as
4 anatomical gifts under Part 3 of Article 16 of Chapter 130A of the General Statutes or
5 the right to perform autopsies under Part 2 of Article 16 of Chapter 130A of the General
6 Statutes."

7 **SECTION 27.** This act is effective when it becomes law.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Thursday, July 26, 2007

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

FAVORABLE

H.B.(CS #1) **802** Contract Power/Department of Transportation.-AB
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 802

Committee Substitute Favorable 5/22/07

Short Title: Contract Power/Department of Transportation.-AB

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THE DEPARTMENT OF TRANSPORTATION CONTRACTING AUTHORITY TO PROVIDE FOR TRANSPORTATION INFRASTRUCTURE AND LITTER REMOVAL FROM STATE RIGHTS-OF-WAY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(39) reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

...
(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by ~~tolls~~ tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating ~~highways, roads, streets, and bridges~~ transportation infrastructure in this ~~State~~ State, with priority given to highways, roads, streets, and bridges. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision."

SECTION 2. G.S. 143B-350(f)(12a) reads as rewritten:

"(12a) To approve partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by ~~tolls~~ tolls, contracts, and other financing methods

1 authorized by law, the cost of acquiring, constructing, equipping,
2 maintaining, and operating ~~highways, roads, streets, and~~
3 ~~bridges~~ transportation infrastructure in this State. State, with priority
4 given to highways, roads, streets, and bridges."

5 **SECTION 3.** G.S. 136-28.1 is amended by adding a new subsection to read:

6 "**§ 136-28.1. Letting of contracts to bidders after advertisement; exceptions.**

7 ...

8 (l) The Department of Transportation may enter into as many as two pilot
9 contracts for public private participation in providing litter removal from State
10 right-of-way. Selection of firms to perform this work shall be made using a best value
11 procurement process and shall be without regard to other provisions of law regarding
12 the Adopt-A-Highway Program administered by the Department. Acknowledgement of
13 sponsors may be indicated by appropriate signs that shall be owned by the Department
14 of Transportation. The size, style, specifications, and content of the signs shall be
15 determined in the sole discretion of the Department of Transportation. The Department
16 of Transportation may issue rules and policies necessary to implement this section."

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



HOUSE BILL 802: Contract Power/Department of Transportation.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 26, 2007
Introduced by:	Rep. Dickson	Summary by:	Wendy Graf Ray
Version:	Second Edition		Committee Counsel

SUMMARY: *House Bill 802 would authorize DOT to enter into partnership agreements to finance transportation infrastructure, and it would authorize DOT to enter into two pilot contracts for public private participation in providing litter removal from State right-of-way.*

BILL ANALYSIS:

Partnership agreements for transportation infrastructure. In 2006, DOT was given the authority to enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating highways, roads, streets, and bridges. Agreements must be approved by the Board of Transportation. **Section 1** of the bill would expand this authority to allow these partnership agreements to finance all transportation infrastructure (rather than limiting it to roads and bridges) and to allow financing by contracts (in addition to tolls and other financing methods authorized by law). The bill would require that priority be given to highways, roads, streets, and bridges, over other types of transportation infrastructure. It would also require that the Department report to Transportation Oversight and Transportation Appropriations Committees on any proposed agreement at the same time it notifies the Board of Transportation. **Section 2** would make a conforming change to the duties of the Board of Transportation.

Contracts for litter removal. **Section 3** of the bill would authorize DOT to enter into as many as two pilot contracts for public private participation in providing litter removal from State right-of-way using a best value procurement process.

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

H0802e2-SMSU

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Saturday, July 28, 2007

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE
AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 1685	Adlt Care Home or Nursing Home/Expedited Con.
	Draft Number: PCS70607
	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) 1817	Protect Consumers - Covered Loans.
	Draft Number: PCS60404
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1817
Committee Substitute Favorable 5/16/07

Short Title: Protect Consumers - Covered Loans.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS REGARDING COVERED LOANS AND TO
INCREASE THE COMMISSIONER'S DISCIPLINARY AUTHORITY OVER
LICENSEES UNDER THE MORTGAGE LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-10.2 is amended by adding a new subsection to read:

"(d1) For purposes of this subsection, the term "obligor" means a borrower, co-borrower, cosigner, or guarantor obligated to repay a consumer home loan. No lender shall make a consumer home loan based predominantly on the foreclosure value of the real property taken as collateral rather than on the obligor's ability to repay the loan according to its terms, unless the lender reasonably and in good faith believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, has or have the ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums. The lender's analysis of an obligor's ability to repay the loan according to its terms and to pay related real estate taxes and insurance premiums shall be based on a consideration of the obligor's FICO or other comparable risk score, credit history, current and expected income, current obligations, employment status, and other financial resources. However, the lender's analysis shall not rely primarily on the obligor's equity in the real property that secures repayment of the loan unless the obligor is required by the terms of the loan to make a balloon payment at maturity and either (i) the obligor has expressed an intent to sell the real property that secures repayment of the loan before maturity and apply the proceeds of sale to the satisfaction of the loan, or (ii) the lender reasonably and in good faith believes at the time the loan is closed that the obligor is sufficiently creditworthy to refinance the loan at maturity.

(1) In determining an obligor's ability to repay the loan according to its terms and to pay applicable real estate taxes and hazard insurance premiums, the lender shall take reasonable steps to verify the accuracy and completeness of information provided by or on behalf of the

obligor. Acceptable methods of verification may include one or more of the following: determination of the obligor's FICO or other comparable risk score, verification of employment with the obligor's employer, verification of deposit and investment assets with financial institutions and brokerage firms, the review of public records, and the review of reasonably available financial records such as credit reports, tax returns, bank and brokerage account statements, and payroll receipts. A lender's failure to verify the accuracy and completeness of information provided by or on behalf of the obligor as required by this subdivision shall not in and of itself subject the lender to liability or to the penalties provided in subsection (e) of this section.

(2) In determining an obligor's ability to repay the loan according to its terms when the loan has an adjustable rate feature, the lender shall (i) take into consideration any balance increase that may accrue from any negative amortization provision, and (ii) assume that the loan proceeds are fully disbursed on the date of the loan closing and that the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed interest rate at the time of the loan closing. For purposes of this subdivision, the fully indexed interest rate at the time of the loan closing is the interest rate that would have applied at the time of the closing had the initial interest rate been determined by the application of the same interest rate formula that applies under the terms of the loan documents to subsequent interest rate adjustments.

(3) This subsection shall not apply to equity lines of credit as defined in G.S. 24-9(a)(2), or to consumer home loans underwritten and approved by a lender (i) on the basis of an obligor's FICO or other comparable risk score considered in conjunction with one or more other underwriting factors, such as the ratio obtained by dividing the loan amount by the value of the real property that will secure repayment of the loan, or (ii) on the basis of other commercially reasonable and prudent underwriting standards."

SECTION 2. G.S. 53-243.04 reads as rewritten:

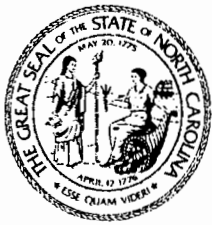
"§ 53-243.04. Rule-making authority.

The Banking Commission may adopt any rules ~~when~~—it deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, ~~and to instruct mortgage lenders or brokers in interpreting this Article.~~ ~~Article, and to implement and interpret the provisions of G.S. 24-1.1E and G.S. 24-10.2 as they apply to licensees under this Article."~~

SECTION 3. G.S. 53-243.12 is amended by adding a new subsection to read:

"(m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order, prohibit licensees under this Article from engaging in acts and practices in connection with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this State, or that are not in the best interest of the borrowing public."

1 **SECTION 4.** This act becomes effective October 1, 2007. Section 1 of this
2 act applies to consumer home loans entered into on or after that date.



HOUSE BILL 1817: Protect Consumers - Covered Loans

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 26, 2007
Introduced by:	Rep. Blue	Summary by:	O. Walker Reagan
Version:	PCS to Second Edition H1817-CSRU-41		Committee Co-Counsel

SUMMARY: *The Proposed Senate Committee Substitute for House Bill 1817 amends the law that provides consumer protections in certain home loans to require that lenders not make consumer home loans without determining the borrower's ability to repay the loan. The bill also authorizes the Commissioner of Banks to prohibit mortgage lending licensees from engaging practices that the Commissioner finds to be unfair, deceptive, designed to evade the laws of the State, or not in the best interest of the borrowing public.*

CURRENT LAW: Under North Carolina's anti-predatory lending law, lenders may not engage in certain practices in connection with consumer home loans. For example, a lender may not finance credit life, disability, or unemployment or other health or life insurance premiums as part of the loan, nor may a lender engage in the practice of "flipping", which is refinancing an existing loan which has no reasonable or tangible net benefit to the borrower, or encourage a borrower to default on an existing loan.

BILL ANALYSIS:

Section 1 of the bill includes compensation paid to a mortgage broker in the definition of points and fees, including compensation paid in a table-funded transaction.

Section 2 defines a table-funded transaction closed in a mortgage broker's name with funds advanced by another party with the loan immediately transferred to the person who advanced the funds.

Sections 3 and 5 makes a mortgage broker who brokers a high-cost home loan or a consumer home loan respectively in violation of the law jointly and severally liable with the lender.

Section 4 adds a new section applicable only to subprime home loans by:

- Prohibiting prepayment penalties.
- Requiring that the lender document and verify the borrower's ability to repay. For ARMs, the lender would have to look toward future rate/payment increases in determining ability to repay.
- Requiring escrow of taxes and insurance.
- Making the lender who pays compensation to a mortgage broker liable for all acts, omissions or representations of the broker, if the broker makes a loan on the lender's behalf or sells or delivers the loan to the lender.

Section 6 gives the Commissioner of Banks rulemaking authority for the provisions being added by the bill.

Section 7 amends the mortgage broker's duties to require that brokers owe a duty of loyalty to the borrower. A broker is required to find a loan that is "reasonably advantageous" to the borrower, considering all of the borrower's circumstances, and to disclose all expected compensation.

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Section 8 amends the mortgage broker's prohibited activities to add the following as unlawful acts:

- Brokering a loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender at the lowest APR for which the borrower qualifies.
- Failing to comply with all applicable federal laws and regulations.
- Engaging in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.

Section 9 gives Commissioner of Banks the authority to ban or limit practices that the Commissioner finds to be unfair, deceptive, designed to evade the laws of this state, or which are not in the best interest of the borrowing public.

EFFECTIVE DATE: This act becomes effective October 1, 2007. Section 1 applies to consumer home loans entered into on or after that date.

H1817e2-SMRU-CSR-41

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 1817

Committee Substitute Favorable 5/16/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H1817-PCS60404-RU-41

Short Title: Protect Consumers - Covered Loans.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS REGARDING COVERED LOANS AND TO
INCREASE THE COMMISSIONER'S DISCIPLINARY AUTHORITY OVER
LICENSEES UNDER THE MORTGAGE LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-1.1E(a)(5) reads as rewritten:

"(5) "Points and fees" is defined as provided in this subdivision.

a. The term includes all of the following:

1. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential.
2. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase "points and fees".
3. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a.1. or a.2. of this subdivision. To the extent not otherwise included in sub-subdivision a.1. or a.2. of this subdivision, all compensation paid from any source to a mortgage broker, including compensation paid to a mortgage broker in a table-funded transaction. A bona fide sale of a loan in the secondary mortgage

1 market shall not be considered a table-funded
2 transaction, and a table-funded transaction shall not be
3 considered a secondary market transaction.

4 4. The maximum prepayment fees and penalties which may
5 be charged or collected under the terms of the loan
6 documents.

7 b. Notwithstanding the remaining provisions of this subdivision,
8 the term does not include (i) taxes, filing fees, recording and
9 other charges and fees paid or to be paid to public officials for
10 determining the existence of or for perfecting, releasing, or
11 satisfying a security interest; and (ii) fees paid to a person other
12 than a lender or an affiliate of the lender or to the mortgage
13 broker or an affiliate of the mortgage broker for the following:
14 fees for tax payment services; fees for flood certification; fees
15 for pest infestation and flood determinations; appraisal fees;
16 fees for inspections performed prior to closing; credit reports;
17 surveys; attorneys' fees (if the borrower has the right to select
18 the attorney from an approved list or otherwise); notary fees;
19 escrow charges, so long as not otherwise included under
20 sub-subdivision a. of this subdivision; title insurance premiums;
21 and ~~fire~~premiums for insurance against loss or damage to
22 property, including hazard insurance and flood insurance
23 premiums, provided that the conditions in section 226.4(d)(2) of
24 Title 12 of the Code of Federal Regulations are met.

25 c. For open-end credit plans, the term includes those points and
26 fees described in sub-subdivisions a.1. through a.3. of this
27 subdivision that are charged at or before loan closing, plus (i)
28 the minimum additional fees the borrower would be required to
29 pay to draw down an amount equal to the total loan amount, and
30 (ii) the maximum prepayment fees and penalties which may be
31 charged or collected under the terms of the loan documents."

32 **SECTION 2.** G.S. 24-1.1E(a) is amended by adding the following new
33 subdivisions to read:

34 "(4a) "Mortgage broker" is as defined in G.S. 53-243.01(14).

35 ...

36 (5a) A "table-funded transaction" is a loan transaction closed by a mortgage
37 broker in the mortgage broker's own name with funds advanced by a
38 person other than the mortgage broker in which the loan is assigned
39 contemporaneously or within one business day of the funding of the
40 loan to the person that advanced the funds."

41 **SECTION 3.** G.S. 24-1.1E is amended by adding a new subsection to read:

42 "(g) A mortgage broker who brokers a high-cost home loan that violates any
43 provisions of subsection (b) or (c) of this section shall be jointly and severally liable
44 with the lender."

SECTION 4. Article 1 of Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-1.1F. Rate spread home loans.

"(a) Definitions.—The following definitions apply for purposes of this section:

- (1) Annual percentage rate. — The annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.) and the regulations promulgated thereunder by the Federal Reserve Board, as that Act and regulations are amended from time to time.
- (2) Closed-end loan. — A loan other than an open-end credit plan as defined in this section.
- (3) Home loan. — A loan that has all of the following characteristics:
 - a. The loan is not an equity line of credit as defined in G.S. 24-9(a)(2), a construction loan as defined in G.S. 24-10(c), or a reverse mortgage transaction.
 - b. The borrower is a natural person.
 - c. The debt is incurred by the borrower primarily for personal, family, or household purposes.
 - d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time for Fannie Mae.
 - e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-147(7), in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.
 - f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.
- (4) Mortgage broker. — A mortgage broker as defined in G.S. 53-243.01(14).
- (5) Obligor. — Each borrower, co-borrower, cosigner, or guarantor obligated to repay a rate spread home loan.

- (6) Open-end credit plan. – Credit extended by a lender under a plan in which (i) the lender reasonably contemplates repeated transactions, (ii) the lender may charge interest or otherwise impose a finance charge from time to time on an outstanding unpaid balance, and (iii) the amount of credit that may be extended to the obligor during the term of the plan, up to any credit limit set by the lender, is generally made available to the extent that any outstanding balance is repaid.
- (7) Rate spread home loan. – A home loan in which all the following apply:
- a. The difference between the annual percentage rate for the loan and the yield on U.S. Treasury securities having comparable periods of maturity is either equal to or greater than (i) 3 percentage points (3%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) 5 percentage points (5%), if the loan is secured by a subordinate lien mortgage or deed of trust. Without regard to whether the loan is subject to or reportable under the provisions of the Home Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the difference between the annual percentage rate and the yield on Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of HMDA, as those procedures and calculation methods are amended from time to time.
- b. The difference between the annual percentage rate for the loan and the conventional mortgage rate is either equal to or greater than (i) 1.75 percentage points (1.75%), if the loan is secured by a first lien mortgage or deed of trust, or (ii) 3.75 percentage points (3.75%), if the loan is secured by a subordinate lien mortgage or deed of trust. For purposes of this calculation, the "conventional mortgage rate" means the most recent daily contract interest rate on commitments for fixed-rate first mortgages published by the Board of Governors of the Federal Reserve System in its Statistical Release H.15, or any publication that may supersede it, during the week preceding the week in which the interest rate for the loan is set.
- (8) Table-funded transaction. – A home loan transaction closed by a mortgage broker in the mortgage broker's own name with funds advanced by a person other than the mortgage broker in which the loan is assigned contemporaneously or within one business day of the funding of the loan to the person that advanced the funds. A bona fide sale of a loan in the secondary mortgage market shall not be considered a table-funded transaction, and a table-funded transaction shall not be considered a secondary market transaction.

1 (b) No prepayment fees or penalties shall be charged or collected on a rate spread
2 home loan.

3 (c) No lender shall make a rate spread home loan unless the lender reasonably
4 and in good faith believes at the time the loan is consummated that one or more of the
5 obligors, when considered individually or collectively, has the ability to repay the loan
6 according to its terms and to pay applicable real estate taxes and hazard insurance
7 premiums. If a lender making a rate spread home loan knows that one or more mortgage
8 loans secured by the same real property will be made contemporaneously to the same
9 borrower with the rate spread home loan being made by that lender, the lender making
10 the rate spread home loan must document the borrower's ability to repay the combined
11 payments of all loans on the same real property.

12 (1) A lender's analysis of an obligor's ability to repay a rate spread home
13 loan according to the loan terms and to pay related real estate taxes and
14 insurance premiums shall be based on a consideration of the obligor's
15 credit history, current and expected income, current obligations,
16 employment status, and other financial resources other than the
17 obligor's equity in the real property that secures repayment of the rate
18 spread home loan.

19 (2) In determining an obligor's ability to repay a rate spread home loan,
20 the lender shall take reasonable steps to verify the accuracy and
21 completeness of information provided by or on behalf of the obligor
22 using tax returns, payroll receipts, bank records, reasonable alternative
23 methods, or reasonable third-party verification.

24 (3) In determining an obligor's ability to repay a rate spread home loan
25 according to its terms when the loan has an adjustable rate feature, the
26 lender shall take into consideration any balance increase that may
27 accrue from any negative amortization provision. The lender shall
28 calculate the monthly payment amount for principal and interest by
29 assuming (i) the loan proceeds are fully disbursed on the date of the
30 loan closing, (ii) the loan is to be repaid in substantially equal monthly
31 amortizing payments of principal and interest over the entire term of
32 the loan, with no balloon payment, and (iii) the interest rate over the
33 entire term of the loan is a fixed rate equal to the fully indexed interest
34 rate at the time of the loan closing, without considering any initial
35 discounted rate. The "fully indexed interest rate at the time of the loan
36 closing" is the interest rate that would have applied at the time of the
37 closing had the initial interest rate been determined by the application
38 of the same interest rate formula, (for example, an interest rate index
39 plus or minus a margin) that applies under the terms of the loan
40 documents to subsequent interest rate adjustments, disregarding any
41 limitations on the amount by which the interest rate may change at any
42 one time.

43 (d) Subject to the provisions of this subsection, a lender is jointly and severally
44 liable to the borrower for the wrongful acts and omissions of a mortgage broker in the

1 origination of a rate spread home loan if (i) the lender compensates the mortgage broker
2 in that specific rate spread home loan transaction, and (ii) either (a) the mortgage broker
3 sells or delivers that rate spread home loan to the lender in a table-funded transaction, or
4 (b) that rate spread home loan is closed in the lender's name.

5 (1) For purposes of this subsection, a yield-spread premium paid to or
6 retained by the mortgage broker shall be considered compensation paid
7 by the lender to the mortgage broker if either (i) the mortgage broker
8 sells or delivers that rate spread home loan to the lender in a
9 table-funded transaction, or (ii) the rate spread home loan is closed in
10 the lender's name.

11 (2) A lender's liability and a borrower's remedies against a lender for the
12 wrongful acts or omissions of a mortgage broker under this subsection
13 shall be specific to the rate spread home loan in question and shall be
14 subject to the following:

15 a. If the rate spread home loan violates the provisions of
16 subsection (b) or (c) of this section, the lender shall, at the
17 borrower's option, either (i) make the rate spread home loan
18 comply with the provisions of subsection (b) or (c) of this
19 section, or (ii) change the terms of the loan in a manner
20 beneficial to the borrower so that the loan will no longer be
21 considered a rate spread home loan subject to the provisions of
22 this section.

23 b. If the rate spread home loan does not violate subsection (c) of
24 this section, but the mortgage broker materially misrepresented
25 to the lender the obligor's ability to repay, the lender shall adjust
26 the interest rate and payment terms, if necessary, to make the
27 loan meet the underwriting standards of subsection (c) of this
28 section based on the obligor's actual ability to repay as of the
29 time the loan was closed.

30 c. The lender shall make appropriate restitution. However, the
31 total amount the borrower may recover from the lender in the
32 form of restitution, monetary damages, and/or a reduction in the
33 loan principal under this subsection shall not exceed in the
34 aggregate the sum of all finance charges and fees actually paid
35 by the borrower in connection with that loan transaction. A
36 reduction in the amount of interest to be paid by the borrower in
37 the future as a consequence of any reduction in the interest rate
38 shall not be considered restitution, monetary damages, or a
39 reduction in the loan principal for purposes of this provision.

40 d. Any prepayment penalty contained in the loan documents shall
41 be unenforceable.

42 e. The borrower shall be entitled to recover the costs of the action
43 and, in the discretion of the court, the borrower's reasonable
44 attorneys' fees.

- (3) A lender liable for the wrongful acts or omissions of a mortgage broker under this subsection shall, to the extent of such liability, have a right of contribution from the mortgage broker and be subrogated to the rights of each obligor against the mortgage broker.
- (4) Nothing in this subsection shall be construed as exempting any mortgage broker from liability or limiting a mortgage broker's liability for that mortgage broker's wrongful acts or omissions.
- (5) This subsection applies without regard to whether the rate spread home loan violates subsection (b) or (c) of this section.
- (6) In determining a lender's liability under this subsection, a court shall take into account all of the facts and circumstances pertaining to the making of the rate spread home loan in question.
- (7) A lender shall have no liability under this subsection if the obligor has engaged in fraud or other intentional material wrongdoing in obtaining the rate spread home loan.

(e) The making of a rate spread home loan which violates subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter. In addition, any prepayment penalty in violation of this section shall be unenforceable. However, an obligor shall not be entitled to recover twice for the same wrong. To the extent an obligor recovers damages from a lender or a mortgage broker under subsection (d) of this section, the recovery shall be credited to the lender's and mortgage broker's liability under this subsection. The Attorney General, the Commissioner of Banks, or any party to a rate spread home loan may enforce the provisions of this section. This section establishes specific consumer protections in rate spread home loans in addition to other consumer protections that may be otherwise available by law. A mortgage broker who brokers a rate spread home loan that violates the provisions of this section shall be jointly and severally liable with the lender.

(f) The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (ii) any other such subterfuge.

(g) A lender in a rate spread home loan who, when acting in good faith, fails to comply with this section, will not be deemed to have violated this section if the lender establishes that either:

- (1) Within 90 days of the loan closing and prior to the institution of any action against the lender under this section, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c), or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within 120 days after the discovery of the compliance failure and prior to the institution of any action against the lender under this section or the lender's receipt of written notice of the compliance failure, the borrower was notified of the compliance failure, the lender tendered appropriate restitution, the lender offered, at the borrower's option, either to (i) make the rate spread home loan comply with subsection (b) or (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a rate spread home loan subject to the provisions of this section, and within a reasonable period of time following the borrower's election of remedies, the lender took appropriate action based on the borrower's choice. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(h) The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby.

(i) This section applies to rate spread home loans made on or after October 1, 2007."

SECTION 5. G.S. 24-10.2 is amended by adding a new subsection to read:

"(h) A mortgage broker who brokers a consumer home loan that violates the provisions of this section shall be jointly and severally liable with the lender."

SECTION 6. G.S. 53-243.04 reads as rewritten:

"§ 53-243.04. **Rule-making authority.**

The ~~Banking Commission~~ Commissioner may adopt any rules when—it—that the Commissioner deems necessary to carry out the provisions of this Article, to provide for the protection of the borrowing public, and to instruct mortgage lenders or brokers in interpreting this Article, and to implement and interpret the provisions of G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees under this Article."

SECTION 7. G.S. 53-243.10 reads as rewritten:

"§ 53-243.10. **Mortgage broker duties.**

A mortgage broker, including any mortgage broker licensee and any person required to be licensed as a mortgage broker under this Article, shall, in addition to duties imposed by other statutes or at common law, shall do all of the following:

(1) Safeguard and account for any money handled for the borrower; borrower.

(2) Follow reasonable and lawful instructions from the borrower; borrower.

(3) Act with reasonable skill, care, and diligence; and diligence.

- (4) ~~Make reasonable efforts, with lenders with whom the broker regularly does business to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan and the loan options for which the borrower qualifies with such lenders. loan.~~
- (5) Owe a duty of loyalty to the borrower.
- (6) Timely and clearly disclose to the borrower material information that may be expected to influence the borrower's decision and is reasonably accessible to the mortgage broker, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.
- (7) If the mortgage broker knows that more than one mortgage loan will be made by different lenders contemporaneously to a borrower secured by the same real property, the mortgage broker shall, prior to closing, notify each lender of the particulars of each of the other lender's loans."

SECTION 8. G.S. 53-243.11 reads as rewritten:

"§ 53-243.11. Prohibited activities.

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any mortgage loan transaction:

- (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.
- (2) To refuse improperly to issue a satisfaction of a mortgage.
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, broker, or loan officer is not entitled to retain under the circumstances.
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.
- (5) To charge or collect any fee or rate of interest or to make or broker any mortgage loan with terms or conditions or in a manner contrary to the provisions of Chapter 24 of the General Statutes.
- (6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.
- (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.

- 1 (8) To engage in any transaction, practice, or course of business that is not
2 in good faith or fair dealing or that constitutes a fraud upon any
3 person, in connection with the brokering or making of, or purchase or
4 sale of, any mortgage loan.
- 5 (9) To fail promptly to pay when due reasonable fees to a licensed
6 appraiser for appraisal services that are:
7 a. Requested from the appraiser in writing by the mortgage broker
8 or mortgage banker or an employee of the mortgage broker or
9 mortgage banker; and
10 b. Performed by the appraiser in connection with the origination or
11 closing of a mortgage loan for a customer or the mortgage
12 broker or mortgage banker.
- 13 (10) To broker a mortgage loan ~~which~~that contains a prepayment penalty if
14 the principal amount of the loan is one hundred fifty thousand dollars
15 (\$150,000) or ~~less~~less or if the loan is a rate spread home loan as
16 defined in G.S. 24-1.1F.
- 17 (11) To improperly influence or attempt to improperly influence ~~through~~
18 ~~coercion, extortion, or bribery,~~ the development, reporting, result, or
19 review of a real estate appraisal sought in connection with a mortgage
20 loan. Nothing in this subdivision shall be construed to prohibit a
21 mortgage broker or mortgage banker from asking the appraiser to do
22 one or more of the following:
23 a. Consider additional appropriate property information.
24 b. Provide further detail, substantiation, or explanation for the
25 appraiser's value conclusion.
26 c. Correct errors in the appraisal report.
- 27 (12) To fail to comply with the mortgage loan servicing transfer, escrow
28 account administration, or borrower inquiry response requirements
29 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
30 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
31 there under by the Secretary of the Department of Housing and Urban
32 Development.
- 33 (13) To broker an adjustable rate mortgage loan without disclosing to the
34 borrower the terms and costs associated with a fixed rate loan from the
35 same lender at the lowest annual percentage rate for which the
36 borrower qualifies.
- 37 (14) To fail to comply with applicable federal laws and regulations related
38 to mortgage lending.
- 39 (15) To engage in unfair, misleading, or deceptive advertising related to a
40 solicitation for a mortgage loan."

41 **SECTION 9.** G.S. 53-243.12 is amended by adding a new subsection to

42 read:

43 "(m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order,
44 prohibit licensees under this Article from engaging in acts and practices in connection

1 with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to
2 evade the laws of this State, or that are not in the best interest of the borrowing public."

3 **SECTION 10.** This act becomes effective October 1, 2007. Section 1 of this
4 act applies to consumer home loans entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. H1817-CSRU-41

H. B. No. 1817

DATE 7/26/07

S. B. No. _____

Amendment No. #1

COMMITTEE SUBSTITUTE H1817-CSRU-41 [v. 2]

(to be filled in by
Principal Clerk)

Rep.) Nesbitt

Sen.)

1 moves to amend the bill on page 5, line 42 THROUGH PAGE 6, LINE 4

2 () WHICH CHANGES THE TITLE

3 by DELETING THE LINE 6; AND

4 BY RELETTERING THE REMAINING STATUTORY SUBSECTIONS
5 ACCORDINGLY; AND

6
7 ON PAGE 6, LINES 24 + 26 BY DELETING THE WORDS
8 "SUBSECTIONS (b), (c), OR (d)" AND SUBSTITUTING THE
9 WORDS "SUBSECTIONS (b) OR (c)"; AND

10
11 ON PAGE 7, LINE 17, BY DELETING THE WORDS "SUBSECTIONS
12 (b), (c), OR (d)" AND SUBSTITUTING THE WORDS
13 "SUBSECTIONS (b) OR (c)"; AND

14
15 ON PAGE 7, LINES 24 AND 25, BY DELETING THE WORDS
16 "SUBSECTIONS (b), (c), OR (d)" AND SUBSTITUTING THE
17 WORDS "SUBSECTIONS (b) OR (c)"; AND

18 ON PAGE 8, LINES 3 AND 18, BY DELETING THE WORDS "SUBSECTIONS
19 (b), (c), AND (d)" AND SUBSTITUTING THE WORDS "SUBSECTIONS (b) AND (c)".

SIGNED

Matthew Nesbitt

ADOPTED X

FAILED _____

TABLED _____

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Friday, July 27, 2007

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE
AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 89	Wheel Locks/Boiling Springs.	
	Draft Number:	PCS10271
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 89
Committee Substitute Favorable 3/14/07

Short Title: Wheel Locks/Boiling Springs.

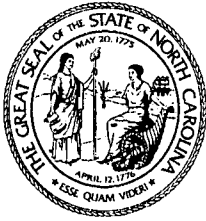
(Local)

Sponsors:

Referred to:

February 7, 2007

- 1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE TOWN OF BOILING SPRINGS TO USE WHEEL
3 LOCKS TO ENFORCE PARKING REGULATIONS ON PROPERTY OWNED,
4 LEASED, OR OCCUPIED BY THE TOWN.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. Section 3 of S.L. 2003-240 reads as rewritten:
7 "SECTION 3. Section 1 of this act applies to the Towns of Boiling Springs,
8 Carolina Beach-Beach, and Wrightsville Beach only."
9 SECTION 2. This act is effective when it becomes law.



HOUSE BILL 89: Oak Island Construction Limitations

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 25, 2007
Introduced by:	Reps. Moore, Clary	Summary by:	Tim Hovis
Version:	PCS to Second Edition H89-CSRG-64[v.3]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 89 makes various changes relating to limitations on construction in the town of Oak Island.*

Section 1 provides that, for the purposes of the act, the acronym "USACE" means United States Army Corps of Engineers.

Section 2 of the bill provides that all land filled in, restored, and made or to be filled in restored and made as a result of beach fill project undertaken by the town of Oak Island shall be within the corporate limits of Oak Island. The bill grants beach fill lands to the north of the January 2000 USACE Line, as determined by section 2 of the act, to abutting landowners. Lands lying to the south are granted to Oak Island. Building setbacks shall be determined by Oak Island pursuant to the January 2000 USACE Line.

Section 3 requires Oak Island to survey, at its own cost, the January 2000 USACE Line (Line) and to install monuments at reasonable intervals marking reference points on the Line. The Line and monuments shall run the full length of nourished beachfront. Oak Island shall also prepare a map showing, fixing, and defining the Line and record the map in the Register of Deeds Office of Brunswick County. The map shall be indexed and cross-indexed by the Register of Deeds. When the map is properly recorded and indexed, it shall be prima facie of the facts thereon and shall conclusively fix the Line in perpetuity. Lands lying to the south of the line shall be at all times kept open for public purposes and, if not kept open, shall revert to the State of North Carolina.

Section 4 provides that the "Actual Vegetation Line" is the line from which the erosion setback is measured for the purposes of the Coastal Area Management Act. As such, the erosion setback line for buildings less than 5,000 shall be 60 feet from the Actual Vegetation Line. For buildings greater than 5,000 square feet, the erosion setback shall be 120 feet from the Actual Vegetation Line. Buildings or structures shall be built 60 feet or 120 feet from the Actual Vegetation Line, as applicable.

Section 5 gives property owners who claim that the act so restricts the use of his or her real property so as to constitute a taking without just compensation 6 months from the installation of monuments under Section 3 of the act to assert the claim in a court of competent jurisdiction. Otherwise, the property owner is conclusively presumed to have acquiesced and accepted the terms and conditions of the act.

Section 6 repeals all laws and clauses of laws in conflict with the act.

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

H0089e2-SMRG-CSRG-64v3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 89

Committee Substitute Favorable 3/14/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H89-CSR-64 [v.3]

7/25/2007 8:41:44 PM

Short Title: Oak Island Construction Limitations.

(Local)

Sponsors:

Referred to:

February 7, 2007

A BILL TO BE ENTITLED

AN ACT RELATING TO LIMITATIONS ON CONSTRUCTION IN THE TOWN OF
OAK ISLAND.

The General Assembly of North Carolina enacts:

SECTION 1. For the purposes of this act, "USACE" means United States
Army Corps of Engineers.

SECTION 2. All land filled in, restored and made and all land to be filled in,
restored and made as a result of beach fill project undertaken by or at the direction of
the Town of Oak Island shall be within the corporate limits of the Town of Oak Island,
and so much of the lands filled in, restored, and made, that will be north of the "January
2000 USACE Line," to be defined and determined by the provisions of Section 3 of this
act, is hereby granted and conveyed in fee simple to the landowner, to the extent that his
land abuts thereon, and the balance of the land lying south of the "January 2000 USACE
Line," to be fixed and determined by the provisions of Section 3 of this act, is hereby
granted and conveyed in fee simple to the Town of Oak Island. For the purposes of this
Act, "beach fill" shall be defined as the placement of sediment along the oceanfront
shoreline. The "January 2000 USACE Line" shall be the line from which building
setbacks will be determined pursuant to regulations of the Town of Oak Island.

SECTION 3. Within 120 days from the date this act becomes law, the Town
of Oak Island shall, at its own cost, survey or have surveyed by a duly licensed surveyor
the "January 2000 USACE Line" and have monuments installed at reasonable intervals
marking reference points on the "January 2000 USACE Line" which shall run the full
length of the nourished beachfront referred to in the preamble of this act. The
governing body of the Town of Oak Island shall cause to be prepared a map showing,
fixing, and defining the "January 2000 USACE Line." The map showing, fixing, and
defining the "January 2000 USACE Line" shall be recorded in the Office of the Register
of Deeds of Brunswick County in a Map Book kept for recording purposes after the

1 surveyor has appended an oath to the effect that the line has been truly and properly
2 surveyed and laid out and marked on the map. The Register of Deeds shall properly
3 index and cross-index the map, and when the map is recorded in the Map Book or
4 entered or placed therein, instead of inserting a transcript thereof, and indexed, the map
5 shall be competent and prima facie evidence of the facts thereon, without other or
6 further proof of the milking of the map, and the map shall conclusively fix and
7 determine the "January 2000 USACE Line" in perpetuity. All made and constructed
8 land lying south of the "January 2000 USACE Line" shall be at all times kept open for
9 public purposes and, if any property that is granted and conveyed to the Town of Oak
10 Island under this act shall cease to be used for the purposes or in the manner prescribed
11 in this act, it shall revert and become the property of the State of North Carolina.

12 **SECTION 4.** The "Actual Vegetation Line" shall be the line from which the
13 erosion setback is measured for the purposes of the Coastal Area Management Act of
14 1974, Article 7 of Chapter 113A of the General Statutes, and administrative regulations
15 promulgated pursuant to the Act. To this end: (i) the erosion setback line for buildings
16 or structures less than 5,000 square feet shall be set at a distance of 60 feet from the
17 "Actual Vegetation Line" so that all the buildings or structures shall be built and erected
18 60 feet landward of the "Actual Vegetation Line"; and (ii) the erosion setback line for
19 buildings or structures greater than 5,000 square feet shall be set a distance of 120 feet
20 from the "Actual Vegetation Line" so that all the buildings or structures shall be built or
21 erected 120 feet landward of the "Actual Vegetation Line."

22 **SECTION 5.** Any property owner who claims that the terms and conditions
23 of this act so restrict the use of his or her real property so as to constitute a taking
24 without just compensation in violation of the North Carolina Constitution or the United
25 States Constitution, and who does not assert the claim against the State of North
26 Carolina in a court of competent jurisdiction within six months after the monuments are
27 installed as provided in Section 3 of this act shall be conclusively presumed to have
28 acquiesced in and to have accepted the terms and conditions of this act and to have
29 abandoned the claim, and shall be forever bound from maintaining any action for
30 redress upon the claim.

31 **SECTION 6.** All laws and clauses of laws in conflict with the provisions of
32 this act are repealed.

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

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Saturday, July 28, 2007

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE
AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 1685	Adlt Care Home or Nursing Home/Expedited Con.
	Draft Number: PCS70607
	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) 1817	Protect Consumers - Covered Loans.
	Draft Number: PCS60404
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: No

TOTAL REPORTED: 2

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

2

HOUSE BILL 1685

Committee Substitute Favorable 5/17/07

Short Title: Adlt Care Home or Nursing Home/Expedited CON.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CERTIFICATE OF NEED REQUIREMENTS TO
ALLOW FOR AN EXPEDITED REVIEW PROCESS FOR AN ADULT CARE
HOME OR A NURSING HOME TO RELOCATE WITHIN THE SAME
COUNTY.

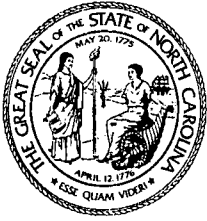
The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Division of Facility Services, shall develop an expedited certificate of need review process for a current holder of a certificate of need for an adult care home or a nursing home to relocate from one licensed facility or campus to another. This expedited certificate of need review process shall be available only to a facility that meets the following criteria:

- (1) The facility currently holds a certificate of need for an adult care home or nursing home.
- (2) The facility proposes to move from one licensed facility or campus to another licensed facility or campus.
- (3) Both the current and the proposed facilities or campuses are located within the same county.
- (4) The relocation of the adult care home or nursing home would not result in an increase in the total number of adult care home beds or nursing home beds for that facility or campus.

SECTION 2. The Department of Health and Human Services, Division of Facility Services, shall implement the expedited certificate of need review process no later than October 1, 2007.

SECTION 3. This act is effective when it becomes law and applies to certificate of need applications for the relocation of adult care homes and adult care home beds or nursing homes and nursing home beds within the same county filed on or after the date of implementation of the expedited review process by the Department of Health and Human Services, Division of Facility Services.



HOUSE BILL 1685: Adlt Care Home or Nursing Home/Expedited CON

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 26, 2007
Introduced by:	Rep. Lewis	Summary by:	Denise Huntley
Version:	PCS to Second Edition H1685-CSRU-40		Committee Staff O. Walker Reagan Committee Co-Counsel

SUMMARY: *House Bill 1685 directs the Department of Health and Human Services to develop an expedited certificate of need review process for an adult care home or a nursing home to relocate within the same county under defined circumstances.*

CURRENT LAW: Article 9 of Chapter 131E sets forth the North Carolina Certificate of Need (CON) law. Briefly put, the law prohibits the development or offering of a "new institutional health service" without first obtaining a CON. G.S. 131E-178. A new institutional health service is defined to include any change in bed capacity. G.S. 131E-176(16)(c). A change in bed capacity includes the relocation of health care facility beds from one licensed facility or campus to another. G.S. 131E-(5). Health service facilities and health service facility beds include adult care homes and nursing homes. G.S. 131E-9(b) and (c).

G.S. 131E-185 sets forth the review process. The Department is given 90 days to complete its review. The Department may extend its review for an additional 60 days when it has requested additional substantive information from an applicant. The statute also provides that the Department may provide for an expedited review. Expedited review may be allowed when the applicant petitions for the review and the Department determines that (1) the review is not competitive (2) the proposed capital expenditure is less than \$5 million (3) no request for public hearing is received and (4) the Department has not determined that a public hearing is in the public interest. G.S. 131E-176(7b).

BILL ANALYSIS: House Bill 1685 directs the Department of Health and Human Services to develop an expedited certificate of need review process for a current holder of a CON for an adult care home or a nursing home to relocate from one licensed facility or campus to another. The application to initiate the expedited certificate of need review process shall be no longer than one page and a ruling on a completed application shall be within 30 days of the date the application is filed, or the application shall be deemed granted.

To qualify for the expedited review process:

- The facility must currently hold a certificate of need for an adult care home or nursing home.
- The facility must propose to move from one licensed facility or campus to another licensed facility or campus.
- Both the current and the proposed facilities or campuses must be located within the same county.
- The relocation of the adult care home or nursing home will not result in an increase in the total number of adult care home beds or nursing home beds for that facility or campus.

House Bill 1685

Page 2

The Department of Health and Human Services, Division of Facility Services, shall implement the expedited certificate of need review process no later than October 1, 2007.

EFFECTIVE DATE: The bill is effective when it becomes law and applies to certificate of need applications for the relocation of adult care homes and adult care beds or nursing homes and nursing home beds within the same county filed on or after the implementation of the expedited review process by the Department of Health and Human Services.

Barbara Riley contributed substantially to this summary.

H1685e2-SMTB-CCSTB

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1685

DATE 7/26/07

S. B. No. _____

Amendment No. #1

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) NESBITT

Sen.)

1 moves to amend the bill on page 1, line 23

2 () WHICH CHANGES THE TITLE

3 by ADDING THE FOLLOWING SENTENCE TO READ:

4 "THE DEPARTMENT SHALL DETERMINE THE MINIMUM

5 REVIEW CRITERIA NEEDED TO DETERMINE THE NEED

6 FOR A RELOCATION OF A FACILITY UNDER THE

7 CIRCUMSTANCES REQUIRED UNDER SECTION 1 OF

8 THE ACT AND REPORT TO THE GENERAL ASSEMBLY

9 ON OR BEFORE MAY 1, 2008."

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Mark Nesbitt

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 1685
Committee Substitute Favorable 5/17/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1685-PCS70607-RU-42

Short Title: Adlt Care Home or Nursing Home/Expedited CON. (Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CERTIFICATE OF NEED REQUIREMENTS TO
ALLOW FOR AN EXPEDITED REVIEW PROCESS FOR AN ADULT CARE
HOME OR A NURSING HOME TO RELOCATE WITHIN THE SAME
COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. The Department of Health and Human Services, Division of
Facility Services, shall develop an expedited certificate of need review process for a
current holder of a certificate of need for an adult care home or a nursing home to
relocate from one licensed facility or campus to another. This expedited certificate of
need review process shall be available only to a facility that meets the following criteria:

- (1) The facility currently holds a certificate of need for an adult care home
or nursing home.
- (2) The facility proposes to move from one licensed facility or campus to
another licensed facility or campus.
- (3) Both the current and the proposed facilities or campuses are located
within the same county.
- (4) The relocation of the adult care home or nursing home would not
result in an increase in the total number of adult care home beds or
nursing home beds for that facility or campus.

SECTION 2. The Department of Health and Human Services, Division of
Health Service Regulation, shall implement the expedited certificate of need review
process no later than October 1, 2007. The Department shall determine the minimum
review criteria needed to determine the need for a relocation of a facility under the
circumstances required under Section 1 of this act and report to the General Assembly
on or before May 1, 2008.

1 **SECTION 3.** This act is effective when it becomes law and applies to
2 certificate of need applications for the relocation of adult care homes and adult care
3 home beds or nursing homes and nursing home beds within the same county filed on or
4 after the date of implementation of the expedited review process by the Department of
5 Health and Human Services, Division of Health Service Regulation.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 1786
Committee Substitute Favorable 5/24/07
Third Edition Engrossed 5/24/07

Short Title: Req. Liability Insurance/Toughman Matches.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED
AN ACT TO REQUIRE PROMOTERS OF TOUGHMAN MATCHES IN NORTH
CAROLINA TO ACQUIRE LIABILITY INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-652.1 reads as rewritten:

"§ 143-652.1. Regulation of Boxing.

The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety shall regulate live boxing and kickboxing matches, whether professional, amateur, sanctioned amateur, or toughman events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars (\$25.00). The Division shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, sanctioned amateur, amateur, and toughman matches and exhibitions in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

- (1) Requirements for issuance of licenses and permits required by this Article.
- (2) Regulation of ticket sales.
- (3) Physical requirements for contestants, including classification by weight and skill.
- (4) Supervision of matches and exhibitions by licensed physicians and referees.
- (5) Insurance and bonding ~~requirements~~requirements; provided that insurance requirements for toughman matches conform to the requirements of G.S. 143-654(e).
- (6) Compensation of participants and licensees.
- (7) Contracts and financial arrangements.

- (8) Prohibition of dishonest, unethical, and injurious practices.
- (9) Facilities.
- (10) Approval of sanctioning amateur sports organizations.
- (11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996."

SECTION 2. G.S. 143-654 reads as rewritten:

"§ 143-654. ~~Licensing~~Licensing, insurance, and permitting.

(a) License and Permit Required. – Except for sanctioned amateur matches, it is unlawful for any person to act in this State as an announcer, contestant, judge, manager, matchmaker, promoter, referee, timekeeper, or second unless the person is licensed to do so under this Article. It is unlawful for a promoter to present a match in this State, other than a sanctioned amateur match, unless the promoter has a permit issued under this Article to do so. The Division has the exclusive authority to issue, deny, suspend, or revoke any license or permit provided for in this Article.

(b) License. – All licenses issued under this Article shall be valid only during the calendar year in which they are issued, except contestant licenses shall be valid for one year from the date of issuance. A license for an announcer, contestant, judge, matchmaker, referee, timekeeper, or second shall be issued only to a natural person. A natural person shall not transfer or assign a license or change it into another name. A license for a manager or promoter may be issued to a corporation or partnership; provided, however, that all officers or partners shall submit an application for individual licensure, and only those officers or partners who are licensed shall be entitled to negotiate or sign contracts. The addition of a new officer or partner during the license period shall necessitate the filing of an application for individual licensure by the new officer or partner.

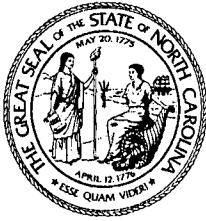
An applicant for a license shall file with the Division the appropriate nonrefundable fee and any forms, documents, medical examinations, or exhibits the Division may require in order to properly administer this Article. The information requested shall include the date of birth and social security number of each applicant as well as any other personal data necessary to positively identify the applicant and may include the requirement of verification of any documents the Division deems appropriate. A person may not participate under a fictitious or assumed name in any match unless the person has first registered the name with the Division.

(c) Surety Bond. – An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Division, a surety bond payable to the Division for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Division or (ii) the promoter's failure to fulfill the obligations of any contract related to the holding of a boxing event. The surety bond shall be issued in an amount to be no less than five thousand dollars (\$5,000). The amount of the surety bond shall be negotiable upon the sole discretion of the Division. All surety bonds shall be upon forms approved by the Secretary of Crime Control and Public Safety and supplied by the Division.

1 (d) Permit. – A permit issued to a promoter under this Article is valid for a single
2 match. An applicant for a permit shall file with the Division the appropriate
3 nonrefundable fee and any forms or documents the Division may require.

4 (e) Insurance. – Promoters of toughman matches must acquire liability insurance
5 for each individual participating in a toughman match from an insurance company duly
6 authorized to sell liability insurance in this State subject to the following minimum
7 limits: two hundred fifty thousand dollars (\$250,000) per occurrence."

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



HOUSE BILL 1786: Prohibit Toughman/Reg. MMA/Fees

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 26, 2007
Introduced by:	Reps. Bordsen, Love	Summary by:	Wendy Graf Ray
Version:	PCS to Third Edition H1786-CSSUf-64[v.4]		Committee Counsel

SUMMARY: *The PCS for House Bill 1786 amends Article 68 of Chapter 143 (Regulation of Boxing) in the following ways:*

- *Prohibits toughman events (effective January 1, 2008).*
- *Authorizes mixed martial arts (effective January 1, 2008, except that no matches would be authorized until rules regulating those events are adopted by the Division).*
- *Increases from \$5,000 to \$10,000 the amount of the surety bond required from a promoter of an event.*
- *Increases the license and permit fees authorized under the Article.*
- *Establishes a new admission fee of \$1.50 per ticket sold to an event to be collected by the Division.*
- *Requires the Division to adopt rules regulating mixed martial arts as soon as practicable.*
- *Makes clarifying changes throughout the Article to make clear that the statutes cover all sporting events that are authorized and not just boxing.*

CURRENT LAW: Article 68 of Chapter 143 gives the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety the authority to regulate boxing, kickboxing, and toughman events. The Division issues licenses to contestants, as well as announcers, judges, managers, matchmakers, promoters, referees, timekeepers, and seconds, in these events. It also issues permits for each event. The Division is authorized to collect specified fees for licenses and permits.

A "toughman event" is defined as an elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO). Under rules issued by the Division, a contestant may no longer compete in toughman events after he or she has been a winner of more than five events.

Under current law, ultimate warrior matches are prohibited. "Ultimate warrior match" is defined as one where participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and the combination of techniques is not specifically authorized under Article 68. Mixed martial arts would fall under that definition, and is therefore currently prohibited by law.

BILL ANALYSIS: The PCS for House Bill 1786 amends the law regulating boxing and related sports in the following ways:

Toughman. The PCS prohibits toughman events, which are currently authorized and regulated by the Division.

House Bill 1786

Page 2

Mixed martial arts. The PCS authorizes mixed martial arts, which is currently prohibited under North Carolina law. Mixed martial arts is a form of sporting martial arts that uses a variety of martial arts techniques, as well as boxing, wrestling, and grappling techniques. The Division is directed to adopt rules, as soon as practicable, to regulate mixed martial arts, and while the authorization becomes effective January 1, 2008, the Division may not issue any licenses or permits for mixed martial arts until those rules become effective.

The PCS makes clear that all other forms of unarmed combat, besides those specifically authorized (boxing, kickboxing, and mixed martial arts), are prohibited under North Carolina law.

Surety bond. The PCS amends G.S. 143-654(c), which requires an applicant for a promoter's license (required to hold a match) to submit a surety bond payable to the Division for the benefit of any person damaged by the promoter's failure to comply with requirements or fulfill contractual obligations related to the holding of a match. The amount of the bond required is currently no less than \$5,000, and the PCS raises the amount to \$10,000.

License and permit fees. The PCS increases all of the fees authorized for licenses and permits issued by the Division as indicated in the following chart:

TYPE OF LICENSE OR PERMIT *	CURRENT FEE	FEE UNDER PCS
Announcer	\$50.00	\$100.00
Contestant	\$25.00	\$50.00
Judge	\$50.00	\$100.00
Manager	\$100.00	\$200.00
Matchmaker	\$200.00	\$400.00
Promoter	\$300.00	\$600.00
Referee	\$50.00	\$100.00
Timekeeper	\$50.00	\$100.00
Second	\$25.00	\$50.00
Facility with a seating capacity of less than 2,000	\$100.00	\$200.00
Facility with a seating capacity of 2,000-5,000	\$200.00	\$400.00
Facility with a seating capacity of over 5,000	\$300.00	\$600.00

* Licenses issued by the Division are valid only during the calendar year in which they are issued, except for contestant licenses, which are valid for one year from the date of issuance. A permit is valid only for a single match.

Admission fee. The PCS authorizes the Division to collect a new admission fee of \$1.50 per ticket sold to any regulated event.

EFFECTIVE DATE: Sections 1 through 7 of the act would be effective January 1, 2008, and would apply to matches held on or after that date. However, no license or permit for mixed martial arts would be issued until the Division has permanent rules in place regulating those events. Section 8 of the act (requiring the Division to adopt rules regulating mixed martial arts) would be effective when it becomes law.

H1786e3-SMSU-CSSUf-64v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 1786
Committee Substitute Favorable 5/24/07
Third Edition Engrossed 5/24/07
PROPOSED SENATE COMMITTEE SUBSTITUTE H1786-CSSUf-64 [v.4]

7/19/2007 5:14:14 PM

Short Title: Prohibit Toughman/Reg. MMA/Fees.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED
AN ACT TO PROHIBIT TOUGHMAN MATCHES IN NORTH CAROLINA, TO
DEFINE AND REGULATE MIXED MARTIAL ARTS, AND TO AUTHORIZE
THE ALCOHOL LAW ENFORCEMENT DIVISION OF THE DEPARTMENT OF
CRIME CONTROL AND PUBLIC SAFETY TO ESTABLISH AND RAISE
CERTAIN FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-651 reads as rewritten:

"§ 143-651. Definitions.

The following definitions apply in this Article:

- (1) Amateur. – A person who is not receiving or competing for and has never received or competed for any purse or other article or thing of value for participating in a match.
- (2) Announcer. – Any person who engages in the act of announcing a ~~boxing~~ match.
- (3) Boxer. – Any person who engages as a participant in a boxing match.
- (4) Boxing match. – A match where the participants engage in the use of full contact boxing techniques (using the fist only), and where the object of a match is to win by decision, knockout (KO), or technical knockout (TKO).
- (5) Repealed by Session Laws 2004-124, s. 18.2.(a), effective July 1, 2004.
- (6) Contest. – A ~~boxing~~ match in which the participants strive to win.
- (7) Contestant. – Any person who engages as a participant in a ~~boxing~~ boxing, kickboxing, or mixed martial arts match.

- 1 (7a) Division. – The Alcohol Law Enforcement Division of the Department
2 of Crime Control and Public Safety.
- 3 (8) Exhibition. – A ~~boxing~~ match where the participants display their
4 ~~boxing~~ skills and technique without necessarily striving to win.
- 5 (9) Judge. – A person who has a vote in determining the winner of any
6 match or contest.
- 7 (10) Kickboxer. – Any person who engages as a participant in a kickboxing
8 match.
- 9 (11) Kickboxing match. – A match in which the participants engage in full
10 contact martial arts fighting techniques using the hands and the feet,
11 and where the object of the match is to win by decision, knockout
12 (KO), or technical knockout (TKO).
- 13 (12) Licensee. – Any person, club, corporation, organization, or association
14 to whom a license has been issued pursuant to the provisions of this
15 Article.
- 16 (13) Manager. – Any person who controls or administers the ~~boxing~~ affairs
17 of any contestant, and who:
- 18 a. By contract, agreement, or other arrangement with any person
19 undertakes or has undertaken to represent in any way the
20 interest of the contestant in any professional ~~boxing~~ contest in
21 which the ~~boxer-contestant~~ is to participate as a contestant, and
22 is entitled under that contract, agreement, or arrangement to
23 receive monetary or other compensation for his or her services,
24 without regard to the sources of the compensation. The term
25 "manager" shall not be construed to mean any attorney licensed
26 to practice in this State whose participation in the activities is
27 restricted solely to representing the interests of a professional
28 ~~boxer-contestant~~ as a client.
- 29 b. Directs or controls the professional ~~boxing~~ activities of any
30 professional ~~boxer-contestant~~.
- 31 c. Receives or is entitled to receive a percentage of the gross purse
32 or gross income of any professional ~~boxing~~ contest.
- 33 (14) Match. – Any ~~boxing or kickboxing~~ boxing, kickboxing, or mixed
34 martial arts contest or exhibition, and includes any event, engagement,
35 sparring or practice session, show or program where the public is
36 admitted and in which there is intended to be physical contact, whether
37 an exhibition or contest. This definition does not include training or
38 practice sessions when no admission is charged.
- 39 (15) Matchmaker. – A person through whom matches are arranged for
40 participants and who otherwise assists participants in procuring
41 engagement dates for boxing dates.
- 42 (15a) Mixed martial artist. – Any person who engages as a participant in a
43 mixed martial arts match.

- (15b) Mixed martial arts. – A form of sporting martial arts that uses a variety of martial arts techniques to deliver blows with the hands, elbows, and any part of the leg below the hip, including the knee and foot, and also uses boxing, wrestling, and grappling techniques.
- (16) Natural person. – An individual.
- (17) Participant. – Any person who engages in a match or exhibition and performs as a ~~boxer~~, boxer, kickboxer, or mixed martial artist.
- (18) Person. – An individual, group of individuals, business, corporation, limited liability company, partnership, or any other individual or collective entity.
- (19) Physician. – An individual licensed to practice medicine in this State.
- (20) Professional. – Any person who is licensed as a professional ~~boxer~~ under the federal Professional Boxing Safety Act of 1996, contestant and receives compensation for participating in matches.
- (21) Promoter. – Any person who produces, arranges, stages, holds, or gives any match in North Carolina involving a professional participant.
- (22) Referee. – The official who shall enter and remain in the ring for the duration of a match and shall enforce the rules and maintain order in the ring.
- (23) Ring official. – Any person who performs an official function for the duration of a match.
- (23a) Sanctioned amateur. – A person who competes in a sanctioned amateur match.
- (23b) Sanctioned amateur match. – Any ~~boxing or kickboxing~~ match regulated by an amateur sports organization that has been recognized and approved by the Division.
- (24) Second. – Any person who will work or be present in the corner of a participant for the duration of a match.
- (25) Timekeeper. – Any person who will operate the clock or watch for the duration of a match for the purpose of keeping the official time of the match.
- (25a) Toughman contestant. – Any person who competes in a toughman event.
- (25b) Toughman event. – An elimination program of matches in which (i) the contestants are not professional boxers, (ii) the finalist receives a purse or other article of value, (iii) the participants engage in the use of full contact boxing techniques, and (iv) the object of each match is to win by decision, knockout (KO), or technical knockout (TKO).
- (26) ~~Ultimate warrior match. – A match where the participants use any combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques and which combination of techniques is not specifically authorized by and conducted pursuant to this Article.~~
- (27) Unarmed Combat. – A match consisting of any combination of boxing, kicking, wrestling, hitting, punching, or other combative contact

techniques which may reasonably be expected to inflict injury to opponents."

SECTION 2. G.S. 143-652.1 reads as rewritten:

"§ 143-652.1. Regulation of ~~Boxing~~ boxing, kickboxing, and mixed martial arts.

The Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety shall regulate live ~~boxing and kickboxing~~ boxing, kickboxing, and mixed martial arts matches, whether professional, amateur, or sanctioned amateur, or ~~toughman~~ amateur events, in which admission is charged for viewing, or the contestants compete for a purse or prize of value greater than twenty-five dollars (\$25.00). The Division shall have the exclusive authority to approve and issue rules for the regulation of the conduct, promotion, and performances of live boxing, kickboxing, and mixed martial arts ~~sanctioned amateur, amateur, and toughman~~ matches and exhibitions ~~exhibitions, whether professional, amateur, or sanctioned amateur.~~ in this State. The rules shall be issued pursuant to the provisions of Chapter 150B of the General Statutes and may include, without limitation, the following subjects:

- (1) Requirements for issuance of licenses and permits required by this Article.
- (2) Regulation of ticket sales.
- (3) Physical requirements for contestants, including classification by weight and skill.
- (4) Supervision of matches and exhibitions by licensed physicians and referees.
- (5) Insurance and bonding requirements.
- (6) Compensation of participants and licensees.
- (7) Contracts and financial arrangements.
- (8) Prohibition of dishonest, unethical, and injurious practices.
- (9) Facilities.
- (10) Approval of sanctioning amateur sports organizations.
- (11) Procedures and requirements for compliance with the Professional Boxing Safety Act of 1996."

SECTION 3. G.S. 143-653 reads as rewritten:

"§ 143-653. ~~Ultimate warrior~~ Unauthorized matches prohibited.

~~Ultimate warrior matches, whether the participants are professionals or amateurs, are prohibited. No person shall promote, conduct, or engage in ultimate warrior matches.~~ an unarmed combat match, whether the participants are professional or amateur, except as authorized by this Article. This section shall not preclude boxing and kickboxing as regulated in this Article or professional wrestling. Toughman events, as defined in G.S. 143-651(25b), are prohibited.

SECTION 4. G.S. 143-654(c) reads as rewritten:

"(c) Surety Bond. – An applicant for a promoter's license must submit, in addition to any other forms, documents, or exhibits requested by the Division, a surety bond payable to the Division for the benefit of any person injured or damaged by (i) the promoter's failure to comply with any provision of this Article or any rules adopted by the Division or (ii) the promoter's failure to fulfill the obligations of any contract related

1 to the holding of a ~~boxing event match~~. The surety bond shall be issued in an amount to
2 be no less than ~~five ten~~ thousand dollars (~~\$5,000~~) (~~\$10,000~~). The amount of the surety
3 bond shall be negotiable upon the sole discretion of the Division. All surety bonds shall
4 be upon forms approved by the Secretary of Crime Control and Public Safety and
5 supplied by the Division."

6 **SECTION 5.** G.S. 143-655 reads as rewritten:

7 **"§ 143-655. Fees; State Boxing Revenue Account.**

8 (a) License Fees. – The Division shall collect the following license fees:

9		
10	Announcer	\$50.00 <u>\$100.00</u>
11	Contestant	\$25.00 <u>\$50.00</u>
12	Judge	\$50.00 <u>\$100.00</u>
13	Manager	\$100.00 <u>\$200.00</u>
14	Matchmaker	\$200.00 <u>\$400.00</u>
15	Promoter	\$300.00 <u>\$600.00</u>
16	Referee	\$50.00 <u>\$100.00</u>
17	Timekeeper	\$50.00 <u>\$100.00</u>
18	Second	\$25.00 <u>\$50.00</u> .

19 The annual license renewal fees shall not exceed the initial license fees.

20 (b) Permit Fees. – The Division may establish a fee schedule for permits issued
21 under this Article. The fees may vary depending on the seating capacity of the facility to
22 be used to present a match. The fee may not exceed the following amounts:

23		
24	Seating Capacity	Fee Amount
25	Less than 2,000	\$100.00 <u>\$200.00</u>
26	2,000 – 5,000	\$200.00 <u>\$400.00</u>
27	Over 5,000	\$300.00 <u>\$600.00</u> .

28 (b1) Admission Fees. – The Division shall collect a fee in the amount of one dollar
29 and fifty cents (\$1.50) per each ticket sold to attend events regulated in this Article.

30 (c) State Boxing Revenue Account. – There is created the State Boxing Revenue
31 Account within the Department of Crime Control and Public Safety. Monies ~~[moneys]~~
32 collected pursuant to the provisions of this Article shall be credited to the Account and
33 applied to the administration of the Article."

34 **SECTION 6.** G.S. 143-656 reads as rewritten:

35 **"§ 143-656. Contracts and financial arrangements.**

36 Any contract between licensees and related to a ~~boxing match~~ or exhibition held or
37 to be held in this State must meet the requirements of administrative rules as set forth by
38 the Division. Any contract which does not satisfy the requirements of the administrative
39 rules shall be void and unenforceable. All contracts shall be in writing."

40 **SECTION 7.** G.S. 143-657.1 reads as rewritten:

41 **"§ 143-657.1. Sanctioned amateur matches.**

42 In addition to the other applicable provisions of this Article, a sanctioned amateur
43 match shall be conducted pursuant to the rules of the sports organization sanctioning the
44 ~~boxing match~~ or exhibition."

1 **SECTION 8.** The Alcohol Law Enforcement Division of the Department of
2 Crime Control and Public Safety shall, as soon as practicable, adopt permanent rules to
3 regulate mixed martial arts, as authorized by this act.

4 **SECTION 9.** Sections 1 through 7 of this act become effective January 1,
5 2008 and apply to matches held on or after that date, except that no license or permit for
6 mixed martial arts shall be issued by the Division until the rules required under Section
7 8 of this act become effective. Section 8 of this act is effective when it becomes law.

VISITOR REGISTRATION SHEET

07/26/07
~~07/24/07~~
07/17/07

Senate Commerce, Small Business & Entrepreneurship Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Horton	DHHS
Janice	DHHS
MICHAEL HUGHES	WELLS FARGO
Dick Cotton	NC Fin. Services Auth.
Chris Kukla	Ctr for Responsible Lending
Stella Adams	NC NAACP
SUSAN LUTON	CTR FOR RESPONSIBLE LENDING
Mary Beth	AARP-NC
Al Ripley	NC Justice Ctr
Marlene Foster	Phred

VISITOR REGISTRATION SHEET

07/26/07
~~07/24/07~~
07/17/07

Senate Commerce, Small Business & Entrepreneurship Committee

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE

ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
Elisha Johnson	Center for Responsible Leadership
Lisa Pittman	" " "
Joe Stewart	IFNC
Russ D. Dwyer	IFNC
Evelyn Hurdstone	NCAAT
Jerry Cooper	NCAAT
Henry M. Lancaster	NC FDMNC (LCB)
Martha Brinson	First Citizens Bank, Raleigh
Gene Royall	NC Family Policy Council

VISITOR REGISTRATION SHEET

7/26/07
~~07/27/07~~

Senate Commerce, Small Business & Entrepreneurship Committee

07/17/07

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
ASSISTANT

NAME	FIRM OR AGENCY AND ADDRESS
DON LEE	NCDOT
Johanna Reese	DIST
George Hines	10206 Kinnmont Charlotte George Hines Inc
Jon Carr	Nath Caroline Fernal Directors
PAGE BLACKWELDER	HUNTON & WILLIAMS Assoc.
McNeil Chestnut	Spec. Dep. AG for Tech Comm Bks
Josh Stein	NC AGO
Phil Lehman	"
Evan Fogel	Center for Responsible Lending
Ellen Harnick	Center for Responsible Lending
Benet Magnusson	Center for Responsible Lending

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE
CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

John McHugh

600 000,00

John G. Lister

NCA 5 CF

Roger Bow

Ben. H. Brown

Thomas C. Caves, Jr.

NC Dept. of Crime Control; Public Safety

Coaching Crowder

Camp Street

Senate Commerce

VISITOR REGISTRATION SHEET

Name of Committee

Date

7/26/07

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mack Paul

*Kennedy Covington 4350 Th Lassic
C.N. N.Y. Raleigh 27619*

Charlotte Mitchell

111

DANIEL BAUM

KENNEDY COVINGTON

LUCIUS PULLEN

COUNSEL, NCCA

VISITOR REGISTRATION SHEET

Sen. Commerce
Name of Committee

1/29/07
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Peirny Guffin	Daily Bulletin
Patrice Rouler	NCAAC
Jim Blackburn	NC Association of County Commissioners
Andrew McInffin	Center for Responsible Lending
Sarah Price	BBA
Susan Valauri	Nationwide
Paul Stool	NCAAC
Betty Juncak	BAC
Phillip Horne	FCBS
Martha McEwen	Carolina's Hall of Fame Synt.
Jamal Jones	NCAAC

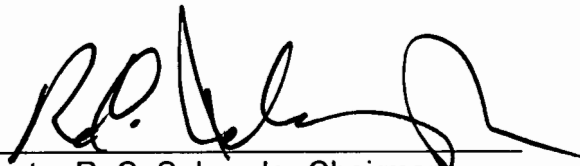
SENATE COMMERCE COMMITTEE
Wednesday, August 1, 2007
Senate Chamber

MINUTES

The Senate Commerce Committee met in the Senate Chamber at 4:10 p.m. on August 1, 2007, in the Senate Chamber. Eighteen members of the Committee were present. Senator R. C. Soles, Jr., Chairman, presided.

Senator Soles recognized Tim Hovis, of the Fiscal Research Division, to explain the Senate Committee Substitute bill for H.C. B. 267, Alcohol Inhalers Illegal. Senator Hoyle moved for adoption of the Senate Committee substitute. The motion carried.

The meeting adjourned at 4:15 p.m.



Senator R. C. Soles, Jr., Chairman

Mona Fitzgerald, Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Wednesday, August 01, 2007

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE
AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 267	Alcohol Inhalers Illegal.	
	Draft Number:	PCS30531
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:



HOUSE BILL 267: ABC Law Changes

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	August 1, 2007
Introduced by:	Rep. Gibson	Summary by:	O. Walker Reagan;
Version:	PCS to Second Edition H267-CSRU-43		Tim Hovis Committee Co-Counsel Brenda Carter, Staff Attorney

SUMMARY: *The Proposed Committee Substitute for House Bill 267 makes various ABC law changes as requested by the ABC Commission.*

BILL ANALYSIS AND CURRENT LAW:

Section 1 permits the Alcohol Beverage Commission (Commission) to issue off-premises malt beverage and unfortified wine permits to incorporated municipalities which have voted to permit the sale of mixed beverages, regardless of other local acts concerning sales of alcoholic beverages. Currently, the Commission may only issue these permits to townships which have voted to permit the sale of malt beverages or unfortified wine.

In the 2005 Session, the legislature enacted a provision that will require the holders of on-premises ABC permits to recycle beverage containers effective January 1, 2008. **Section 2 (a)-(d)** of the bill would make the following changes concerning the recycling of alcoholic beverage containers by ABC permittees:

- Failure to comply with recycling requirements would not be grounds for revocation of an ABC permit
- An applicant for a retail permit for on-premises alcohol sales would be required to submit a recycling plan with the initial application for a permit
- A person holding a retail permit for on-premises alcohol sales would be required to submit a current recycling plan with each annual registration or permit renewal application
- A permittee who is not able to find a recycler by January 1, 2008 may apply for a one-year extension until January 1, 2009. The application would be subject to review and certification by DENR's Division of Pollution Prevention and Environmental Assistance.

Section 3 expands the authorization of holders of unfortified winery permits to allow winemaking on premises with a winemaking on premises permit.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 267 is effective when it becomes law.

H0267e2-SMRG-CSRU-43

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 267

Committee Substitute Favorable 4/11/07

PROPOSED SENATE COMMITTEE SUBSTITUTE H267-PCS30531-RU-43

Short Title: ABC Law Changes.

(Public)

Sponsors:

Referred to:

February 20, 2007

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ISSUANCE OF OFF-PREMISES MALT BEVERAGE
AND UNFORTIFIED WINE PERMITS TO INCORPORATED
MUNICIPALITIES AFTER AN ELECTION ALLOWING THE SALE OF MIXED
BEVERAGES, TO AMEND THE LAW CONCERNING THE JANUARY 1, 2008,
REQUIREMENT FOR CERTAIN ABC PERMITTEES TO RECYCLE
BEVERAGE CONTAINERS, AND TO AUTHORIZE WINEMAKING ON
PREMISES BY AN UNFORTIFIED WINERY PERMIT HOLDER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 18B-603(d)(3) reads as rewritten:

"(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township or incorporated municipality which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages."

SECTION 2.(a) G.S. 18B-1006.1 reads as rewritten:

"§ 18B-1006.1. (Effective January 1, 2008) Additional requirement for certain permittees to recycle beverage containers.

Holders of on-premises malt beverage permits, on-premises unfortified wine permits, on-premises fortified wine permits, and mixed beverages permits shall separate, store, and provide for the collection for recycling of all recyclable beverage containers of all beverages sold at retail on the premises. A permittee has satisfied the

1 requirements of this subsection-section if it implements a recycling program that meets
2 the minimum standards of the model recycling program developed by the Commission
3 pursuant to G.S. 130A-309.14(m). Failure to comply with the requirements of this
4 section shall not be grounds for revocation of a permit."

5 SECTION 2.(b) G.S. 18B-902 is amended by adding a new subsection to
6 read:

7 "(h) Each applicant for an on-premises malt beverage permit, on-premises
8 unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit
9 shall prepare and submit with the application a plan for the collection and recycling of
10 all recyclable beverage containers of all beverages to be sold at retail on the premises."

11 SECTION 2.(c) G.S. 18B-903 is amended by adding a new subsection to
12 read:

13 "(b2) Each person holding an on-premises malt beverage permit, on-premises
14 unfortified wine permit, on-premises fortified wine permit, or a mixed beverages permit
15 shall submit, along with the annual registration or renewal application, a current plan for
16 the collection and recycling of all recyclable beverage containers of all beverages sold
17 at retail on the premises."

18 SECTION 2.(d) A permittee who is not able to find a recycler for its
19 beverage containers by January 1, 2008, may apply to the Alcoholic Beverage Control
20 Commission for a one-year stay of the requirement to implement a recycling program in
21 compliance with G.S. 18B-1006.1, as enacted by Section 1 of S.L. 2005-348. The
22 application shall be made in a form specified by the Commission and shall detail the
23 efforts made by the permittee to provide for the collection and recycling of beverage
24 containers and specify the impediments to implementation of a recycling plan. The
25 Commission shall submit all such applications to the Division of Pollution Prevention
26 and Environmental Assistance of the Department of Environment and Natural
27 Resources for review and certification. The Division of Pollution Prevention and
28 Environmental Assistance shall investigate each application and shall prepare a
29 summary of its investigation and submit the summary to the Commission along with a
30 notation indicating certification or denial of the application. A permittee whose
31 application for a stay is certified by the Division of Pollution Prevention and
32 Environmental Assistance shall not be required to comply with alcoholic beverage laws
33 and regulations concerning recycling requirements before January 1, 2009.

34 SECTION 3. G.S. 18B-1101 is amended by adding a new subdivision to
35 read:

36 "§ 18B-1101. **Authorization of unfortified winery permit.**

37 The holder of an unfortified winery permit may:

38 ...

39 (8) Allow winemaking on premises as allowed by a permit issued pursuant
40 to G.S. 18B-1001(17)."

41 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 **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	May 27, 2008	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SJR 1634	Confirm David McCoy as State Controller.	Senator Soles, Jr.
SB 1695	Vehicle Size and Weight Changes.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, May 27, 2008, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SJR 1634	Confirm David McCoy as State Controller.	Senator Soles, Jr.
SB 1695	Vehicle Size and Weight Changes.	Senator Jenkins

Presentations

Other Business

Adjournment

SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE

Tuesday, May 27, 2008
Room 1027, Legislative Building

MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met at 11:00 a.m. on Tuesday, May 27, 2008, in Room 1027 of the Legislative Building. Eighteen members of the Committee were present. Senator R. C. Soles, Jr., Chairman, presided.

Senator Soles recognized the following pages assisting with today's meeting: Kait Neeland, sponsored by Senator Basnight; Kelly Frizzelle, Zack Russell, and Nick McClelland, sponsored by Senator Malone; and Monica Rivera, sponsored by Senator Weinstein. The Chairman then recognized and welcomed student council members from East Union Middle School who have been studying state government and the legislative process.


Senator Soles stated that the first order of business would be to consider S.J.R. 1634, CONFIRM DAVID MCCOY AS STATE CONTROLLER. After reading the joint resolution, the letter from Governor Easley appointing and submitting Mr. David McCoy's name for confirmation, the applicable statute regarding the confirmation (G.S. 143B-426.37), and the Statement of Economic Interest showing no conflict, Senator Soles recognized Mr. Franklin Freeman, Senior Assistant for Governmental Affairs of the Office of the Governor, to speak to the resolution. Mr. Freeman spoke on behalf of Mr. McCoy and emphasized his many accomplishments during his tenure in state government. He further mentioned Mr. McCoy's competencies for the appointment and asked for the Committee's support of the resolution.

Senator Soles then asked that Mr. McCoy speak to the Committee regarding his interest in the appointment and his qualifications for same. Mr. McCoy spoke to the committee regarding professional accomplishments he considered to be important in fulfilling the role of State Controller and his personal commitment to the Office.

Senator Soles then recognized Senators Dorsett, Hagan, and McKissick, who spoke in support of Mr. McCoy. He then recognized Senator Dorsett who moved for a favorable report of the Senate Joint Resolution. Motion carried.

Senator Soles stated that the next order of business would be to consider S.B. 1695, VEHICLE SIZE AND WEIGHT CHANGES, sponsored by Senator Jenkins. He recognized Senator Rand who moved to adopt the Committee Substitute. Motion carried. Senator Soles recognized Senator Jenkins to explain the bill, who relinquished the floor to Giles Perry, Research Division. The following guests answered questions from the committee members: Kevin Lacey, State Traffic Engineer for the Department of Transportation, Joanna Reese, Legislative Liaison, for the Department of Transportation, and Charlie Neal, President of the North Carolina Trucking Association. Following the question and answer period, Senator Soles recognized Senator Hoyle who moved for a favorable report as to the Committee Substitute bill. Motion carried.

The meeting adjourned at 11:58 p.m.



Senator R. C. Soles, Jr., Presiding

Mona Fitzgerald, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, May 27, 2008

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

FAVORABLE

S.JR.	1634	Confirm David McCoy as State Controller.
		Sequential Referral: None
		Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comments:

PUBLIC BILL

S.J.R. 1634

RESOLUTION _____

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF DAVID MCCOY AS STATE CONTROLLER.

Introduced by Senator(s)

Soles

Soles

Principal Clerk's Use Only

FILED MAY 15 2008

PASSED 1st READING

MAY 19 2008

AND REFERRED TO COMMITTEE

ON

Commerce, Small

Business Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE JOINT RESOLUTION 1634

Sponsors: Senator Soles.

Referred to: Commerce, Small Business and Entrepreneurship.

May 19, 2008

1 A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF DAVID
2 MCCOY AS STATE CONTROLLER.

3 Whereas, under the provisions of G.S. 143B-426.37, the appointment by the
4 Governor of a person to be State Controller is subject to confirmation by the General
5 Assembly; and

6 Whereas, the Governor has submitted to the presiding officers of the House
7 of Representatives and the Senate the name of his appointee, David McCoy, to be State
8 Controller, to serve a term to begin July 1, 2008, and expire June 30, 2015; Now,
9 therefore,

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

11 **SECTION 1.** The appointment of David McCoy as State Controller for a
12 term to begin July 1, 2008, and expire June 30, 2015, is confirmed.

13 **SECTION 2.** This resolution is effective upon ratification.



REFERRED TO

*Commerce / Small
Business / Entrepreneurship*

MAY 13 2008

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
20301 MAIL SERVICE CENTER • RALEIGH, NC 27699-0301

MICHAEL F. EASLEY
GOVERNOR

April 18, 2008

Ms. Janet Pruitt
Principal Clerk of the Senate
North Carolina General Assembly
2007 Legislative Building
Raleigh, NC 27601

Dear Ms. Pruitt:

Pursuant to North Carolina General Statute §143B-426.37, I hereby appoint David McCoy to serve as State Controller of the Office of the State Controller and submit his name for confirmation by the North Carolina General Assembly. His term shall begin July 1, 2008 and will expire June 30, 2015.

Enclosed is biographical information on this appointee. Please feel free to call on him or members of my staff if you need additional information.

With kindest regards, I remain

Very truly yours,

Michael F. Easley
Michael F. Easley

MFE: as

cc: The Honorable Marc Basnight
The Honorable Joe Hackney
The Honorable Beverly Perdue
Ms. Denise Weeks

*Received
APR 22 2008
JPruitt*

DAVID TIMOTHY McCOY

116 W. Jones Street, Raleigh, North Carolina 27699
(919) 807-4717 or david.mccoy@ncmail.net

PROFESSIONAL EXPERIENCE

January, 2001 - Present

State Budget Officer for the State of North Carolina

Serves as a member of the Governor's Cabinet and executive staff. Represents the Governor on all budgetary matters and is responsible for insuring that the Governor's constitutional duties to prepare, recommend, and execute the budget are satisfied.

Manages the Office of State Budget and Management (OSBM) with its staff of 69 and operating budget of approximately \$6.9 million.

Key Accomplishments as State Budget Officer:

- Led OSBM in the development and implementation of the strategic plan to balance the state's budget despite historic revenue shortfalls in fiscal years 2000-01 (\$820 million), 2001-02 (\$1.550 billion), and 2002-03 (\$228 million).
- Implemented a continuous process improvement program in OSBM and in partnership with the Office of State Personnel created an executive training program for members of the Executive Cabinet and Council of State and their chief deputies.
- Developed a new budget and management protocol for disaster management recovery operations.
- Directed the effort to design and implement the use of performance management "Results Based Budgeting" into the statewide Executive Budget process.

Serves as Secretary to the Council of State and is responsible both for insuring that the Council fulfills its statutory responsibilities and for maintaining the official Council Journal for presentation to the General Assembly.

May, 1999 - February, 2001

Secretary of Transportation for the State of North Carolina

Reported directly to the Governor and served as a member of his Cabinet. Served as Chief Operating Executive of the Department of Transportation and Chairman of the 25 member Board of Transportation with full responsibility for strategic planning and management of the Department with its 14,500 employees and annual budget in excess of two billion dollars. Specific responsibilities included oversight of operational services for the second largest state maintained road system in the nation. In North Carolina the responsibilities of the Department of Transportation include highways, ferry service, mass transit, rail, aviation and the Division of Motor Vehicles.

Key Accomplishments as Secretary of Transportation:

- Led a continuous process improvement program that provided over \$18 million in cost savings from 47 initiatives.
- Established the use of SAP's enterprise resource planning software system resulting in improved efficiencies, data sharing, and an overall improved usage of public funds by

streamlining and standardization of key business processes in human resources, payroll, data warehousing, budgeting, and financial services.

- Produced a Transportation Disaster Recovery Operations protocol, manual, and created an emergency operations center within the department.
- Created partnerships with the North Carolina Department of Environment and Natural Resources, the U.S. Environmental Protection Agency, the Army Corps of Engineers and other state and federal regulatory agencies to develop a process for building and maintaining roads in a manner that minimized adverse environmental impacts.
- Established and oversaw the development of the system to reverse interstate highways for evacuation purposes in the event of a catastrophic event.
- Facilitated efforts to provide traveler information in the metropolitan areas of the state through the development and implementation statewide of the traveler information website NCSmartlink.org.
- Created the "Safe Roads for Safe Schools" program to insure that appropriate transportation resources were applied to make it safer for children traveling to and from school.

November, 1997 - May, 1999

Deputy Chief of Staff, Office of the Governor of North Carolina

Managed the day-to-day operations of the Governor's Office and supervised its staff.

Served as primary liaison to the Governor's Cabinet and was fully involved in all activities related to the development and implementation of the Governor's policy and program agenda.

Key Accomplishments:

- Led the reorganization of the Governor's Office.
- Oversaw the implementation of information technology automation of the Governor's Office.

January, 1995 - November, 1997

Chief Deputy Secretary of Administration

Responsible for the supervision and overall management of all business operations within the Department of Administration, which serves as the state's business manager. This included supervision of the divisions of State Purchase and Contract, the State Construction Office, State Property Office, Motor Fleet Management, Information Services, Facility Management, State Capitol Police, and Local Government Affairs. Had decision-making authority to act on behalf of the Secretary in all matters relating to the operation of the Department including fiscal management, personnel management, establishment and implementation of policy, and program activity.

Had line authority for 600+ employees and was responsible for management of an annual budget exceeding \$100,000,000.

Key Accomplishments:

- Led the Department's Total Quality Management initiative which resulted in process improvements, reduced processing time, and effected cost savings for the State Construction Office, Office of Facilities Management, and Motor Fleet Management.
- Coordinated the development of the Capital Master Plan for the Government Complex.
- Served as director of the statewide disaster recovery donations program coordinating the receipt and distribution of all donations in the aftermath of Hurricane Fran, including food and volunteer services.

- Served as director of the *TREE OFF* program, a cooperative effort between North Carolina, FEMA, and the Army Corps of Engineers. Directed the state's activities in the removal of trees from over 6,000 homes in the disaster area.

September, 1989 - December, 1994

General Counsel, Department of Administration

Reported to the Secretary of Administration and provided advice and representation on legal and program issues within the department.

Served as the department's ombudsman and chief legislative liaison.

Key Accomplishments:

- Served as lead attorney and negotiator for the Governor and the State in the Indian Gaming Regulatory Act compact negotiations between the Eastern Band of Cherokee Indians and Governor James B. Hunt which resulted in a Tribal State Compact authorizing and regulating gaming on the Qualla Boundary at Cherokee.
- Served as Special Counsel to Governor James G. Martin during the clemency proceeding to commute the sentence of death imposed upon Anson Avery Maynard.

May, 1987 - August, 1989

Assistant Director, North Carolina Commission of Indian Affairs

Provided day-to-day management of the Commission of Indian Affairs including implementation of policies developed by the Commission's Board.

- Assisted Governor James Martin in negotiating the release of 17 people held hostage by Eddie Hatcher and Timothy Jacobs in the offices of the *Robesonian* newspaper.

May, 1985 - April, 1987

Director, Master's Degree Program in Public Health for American Indians, Office of the Dean, School of Public Health, University of North Carolina at Chapel Hill.

February, 1985 - Present

Clinical and Adjunct Assistant Professor, School of Public Health, Department of Health Behavior and Health Education, University of North Carolina at Chapel Hill.

August, 1984 - May, 1985

Civil Legal Assistance Clinic, School of Law, University of North Carolina at Chapel Hill. Provided legal representation of indigent clients through North State Legal Services.

June, 1983 - November, 1984

Director, American Indian Public Health Recruitment Program, Office of the Dean, School of Public Health, University of North Carolina at Chapel Hill.

January, 1981 - May, 1982

Research Assistant and Teaching Assistant, Department of Health Education, School of Public Health, University of North Carolina at Chapel Hill.

December, 1979 - May, 1980

Special Education Teacher, Bryan County Board of Education, Special Education Department, Pembroke, Georgia. Designed and implemented an educational program for emotionally and behaviorally disturbed students in grades one to ten.

May, 1979 - December, 1979

Supervisor, Waters Tree Service, Savannah, Georgia.

August, 1977 - May, 1979

Teacher of the Gifted and Talented, Clarke County Board of Education, Program for the Gifted, Athens, Georgia. Responsible for the daily instruction of seventy-five academically gifted and talented students.

September, 1974 - June, 1977

Research Assistant, Project R.O.M.E., Department of Curriculum and Supervision, College of Education, University of Georgia, Athens, Georgia.

October, 1972 - September, 1974

Program Director/Coordinator of Counseling Services, Tideland Community School, a residential treatment center for severely emotionally disturbed youth and adolescents, Midway, Georgia. Supervised staff members who served severely emotionally disturbed children and adolescents.

September, 1969 - May, 1970

Teaching Assistant, Orangevale Elementary School, Orangevale, California.

EDUCATION AND PROFESSIONAL DEVELOPMENT

Juris Doctor, 1985

The University of North Carolina at Chapel Hill, Chapel Hill, North Carolina

Master of Public Health, 1982

The University of North Carolina at Chapel Hill, Chapel Hill, North Carolina

Master of Education, 1979

The University of Georgia, Athens, Georgia

Bachelor of Science in Education, 1976

The University of Georgia, Athens, Georgia

Center for Creative Leadership, NCLead Executive Leadership, February, 2008; Solving Complex Problems, May 2007.

Harvard University, John F. Kennedy School of Government, Leadership and Professional Development Executive Training, 2006

2006 Toll Fellow, The Henry Toll Fellowship Program, leadership development program for state government officials, Council of State Governments.

PROFESSIONAL MEMBERSHIPS, BOARDS AND COMMISSIONS, AND SERVICE ACTIVITIES

- Admitted to practice in the North Carolina General Court of Justice and the United States District Courts for the Eastern and Middle Districts of North Carolina, 1991 to present
- Executive Committee, National Association of State Budget Officers, 2007 to present
- North Carolina Council of Internal Auditing, 2007 to present
- UNC Graduate Education Advancement Board, 2005 to present
- Cherokee Preservation Foundation Board of Directors, 2000 to present
- North Carolina Federal Tax Reform Allocation Committee, 2001 to present
- North Carolina Economic Investment Committee, 2003 to present
- North Carolina Debt Affordability Advisory Committee, 2004 to present
- The University of North Carolina at Chapel Hill Board of Visitors, 2001 - 2005
- Information Resource Management Commission, 2001 - 2004
- The Methodist Home for Children Board of Directors, 2001 - 2004
- The Methodist Home for Children Foundation Board of Directors, 2002 - 2004
- Past President, Southern Association of Highway and Transportation Officials, 2000 - 2001
- American Association of Highway and Transportation Officials' Board of Directors, 1999 - 2001
- Chair, Center for Transportation and the Environment, 1999 - 2001
- The Teachers' and State Employees' Comprehensive Major Medical Plan Board of Trustees, 1994 -1998
- Substance Abuse and the Courts State Task Force, 1994
- National Association of State Directors of Administration and General Services, 1995 -1997
- Founder of the Robeson County Dispute Resolution Center, Lumberton, North Carolina, 1989

HONORS AND SCHOLARSHIPS

- Inducted into Pi Alpha Alpha National Honor Society for Public Administration, 2007
- Toll Fellow, Henry Toll Fellowship Program, Council of State Governments, 2006
- Awarded the Order of the Long Leaf Pine, 2000
- Named a University of North Carolina at Chapel Hill Graduate School Distinguished Graduate Alumni
- The Raleigh News and Observer's Tar Heel of the Week, June 13, 1999
- Order of the Golden Fleece, University of North Carolina at Chapel Hill, 1984
- Sarah Graham Kenan Foundation Scholarship in Law, University of North Carolina at Chapel Hill, 1982-1985
- American Indian Law Students Scholarship, American Indian Law Center, University of New Mexico, 1982-1985
- Delta Omega Community Service Award, School of Public Health, University of North Carolina at Chapel Hill, 1982
- "Felix S. Cohen Hornbook Award" for best paper. Federal Indian Law, American Indian Law Center, University of New Mexico, School of Law, 1982

- Who's Who Among Students in American Universities and Colleges, University of Georgia
- The American Legion School Award, 1970

PERSONAL

Married to Robin Bruce McCoy (August 1978)

Two children: Meredith Leigh McCoy (19) and Melissa Susan McCoy (18)

Enrolled Member of the Turtle Mountain Band of Chippewa Indians

Born on August 27, 1952, Tacoma, Washington

REFERENCES

Governor Michael F. Easley, Office of the Governor, State Capitol, Raleigh, North Carolina 27603. (919) 733-4240.

Governor James B. Hunt Jr., Womble, Carlyle, Sandridge and Rice, 150 Fayetteville Street Mall, Raleigh, North Carolina 27601. (919) 755-2100.

Dr. Myron (Barney) Coulter, Chancellor Emeritus, Western Carolina University, Waynesville, North Carolina 28786. (828) 456-3378.

Franklin Freeman, Senior Assistant to the Governor for Governmental Affairs, Office of the Governor, State Capitol, Raleigh, North Carolina 27603. (919) 733-6184.

§ 143B-426.37. State Controller.

(a) The Office of the State Controller shall be headed by the State Controller who shall maintain the State accounting system and shall administer the State disbursing system.

(b) The State Controller shall be a person qualified by education and experience for the office and shall be appointed by the Governor subject to confirmation by the General Assembly. The term of office of the State Controller shall be for seven years; the first full term shall begin July 1, 1987.

The Governor shall submit the name of the person to be appointed, for confirmation by the General Assembly, to the President of the Senate and the Speaker of the House of Representatives by May 1 of the year in which the State Controller is to be appointed. If the Governor does not submit the name by that date, the President of the Senate and the Speaker of the House of Representatives shall submit a name to the General Assembly for confirmation.

In case of death, incapacity, resignation, removal by the Governor for cause, or vacancy for any other reason in the Office of State Controller prior to the expiration of the term of office while the General Assembly is in session, the Governor shall submit the name of a successor to the President of the Senate and the Speaker of the House of Representatives within four weeks after the vacancy occurs. If the Governor does not do so, the President of the Senate and the Speaker of the House of Representatives shall submit a name to the General Assembly for confirmation.

In case of death, incapacity, resignation, removal by the Governor for cause, or vacancy for any other reason in the Office of State Controller prior to the expiration of the term of office while the General Assembly is not in session, the Governor shall appoint a State Controller to serve on an interim basis pending confirmation by the General Assembly.

(c) The salary of the State Controller shall be set by the General Assembly in the Current Operations Appropriations Act. (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 27.)



SENATE BILL 1634: Confirm David McCoy as State Controller

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	May 27, 2008
Introduced by:	Sen. Soles	Summary by:	O. Walker Reagan
Version:	First Edition		Committee Co-Counsel

SUMMARY: *Senate Joint Resolution 1634 confirms the Governor's appointment of David McCoy as State Controller for a seven-year term beginning July 1, 2008.*

CURRENT LAW: The term of the current State Controller, Robert Powell, expires June 30, 2008. The State Controller is appointed by the Governor for a seven-year term subject to confirmation by the General Assembly. The State Controller is responsible for maintaining the State accounting system and administering the State disbursing system, in accordance with Part 28 of Article 9 of Chapter 143B of the General Statutes. See G.S. 143B-426.39 attached for the Powers and Duties of the State Controller.

The salary of the State Controller is set by the General Assembly in the budget. The current annual salary of the State Controller is \$149,216.

BILL ANALYSIS: Senate Joint Resolution 1634 would confirm David McCoy as State Controller for a seven-year term beginning July 1, 2008 and ending June 30, 2015.

EFFECTIVE DATE: The resolution is effective upon ratification.

BACKGROUND: The State Government Ethics Act requires that a person appointed as State Controller file and have evaluated by the State Ethics Commission the person's Statement of Economic Interest (SEI). Mr. McCoy, who is current the State Budget Officer, filed his 2008 SEI as State Budget Officer on April 14, 2008, and filed the required Multiple Board Supplement with regard to his appointment as State Controller on May 19, 2008. The State Ethics Commission has issued its mandatory evaluation of Mr. McCoy's SEI filings on May 20, 2008 and has determined that Mr. McCoy has no actual or potential conflicts of interest. The State Ethics Commission's evaluation and Mr. McCoy's SEI and Multiple Board Supplement are attached.

S1634e1-SMRU

Senate Bill 1634

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§ 143B-426.39. Powers and duties of the State Controller.

The State Controller shall:

- (1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform state accounting system for all state agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds. The State Controller may elect to review a State agency's compliance with prescribed uniform State accounting system standards, as well as applicable legal and constitutional requirements related to compliance with such standards.
- (2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgment of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.
- (3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.
- (4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts, transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.
- (4a) Prescribe that, unless exempted by the State Controller, newly created or acquired component units of the State are required to have the same fiscal year as the State.
- (5) Prescribe the manner in which disbursements of the State agencies shall be made and may require that warrants, vouchers, electronic payments, or checks, except those drawn by the State Auditor, State Treasurer, and Administrative Officer of the Courts, shall bear two signatures of officers as designated by the State Controller.
- (6) Prescribe, develop, operate, and maintain a uniform payroll system, in accordance with G.S. 143B-426.40G and G.S. 143C-6-6 for all State agencies.

Senate Bill 1634

Page 3

This uniform payroll system shall be designed to assure compliance with all legal and constitutional requirements. When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to operate its own payroll system. Any State agency authorized by the State Controller to operate its own payroll system shall comply with the requirements adopted by the State Controller.

- (7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency.
- (8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.
- (9) Develop, implement, and amend as necessary a uniform statewide cash management plan for all State agencies in accordance with G.S. 147-86.11.
- (9a) Implement a statewide accounts receivable program in accordance with Article 6B of Chapter 147 of the General Statutes.
- (10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.
- (11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.
- (12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report in accordance with generally accepted accounting principles of the preceding fiscal year, in accordance with G.S. 143B-426.40H. The report shall include State agencies and component units of the State, as defined by generally accepted accounting principles.
- (13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the State Budget Act, Chapter 143C of the General Statutes.
- (14) through (16) Recodified as G.S. 143B-472.42 (1), (2), and (3) by Session Laws 1997-148, s. 3; (1985 (Reg. Sess., 1986), c. 1024, s. 1; 1987, c. 738, s. 59(a)(2); 1989, c. 239, s. 4; 1989 (Reg. Sess., 1990), c. 1024, s. 37; 1991, c. 542, s. 14; 1993, c. 512, s. 2; 1993 (Reg. Sess., 1994), c. 777, s. 1(a); 1997-148, s. 3; 2000-67, s. 7(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2005-65, s. 1; 2005-276, s. 6.19; 2006-66, s. 6.19(a), (c); 2006-203, s. 8; 2006-221, s. 3A; 2006-259, s. 40(a), (c).)



STATE ETHICS COMMISSION

1324 MAIL SERVICE CENTER
RALEIGH, NC 27699-1324
WWW.ETHICSCOMMISSION.NC.GOV

ROBERT L. FARMER
CHAIRMAN

PERRY Y. NEWSON
EXECUTIVE DIRECTOR

May 20, 2008

The Honorable Michael F. Easley
Governor of North Carolina
20301 Mail Service Center
Raleigh, North Carolina 27699

Re: Evaluation of Statement of Economic Interest for Mr. David T. McCoy
State Controller

Dear Governor Easley:

I am in receipt of Mr. David T. McCoy's May 19, 2008, Multiple Board Supplement. Mr. McCoy is being considered for the position of State Controller. I have reviewed it for actual and potential conflicts of interest in accordance with G.S. Chapter 138A, the State Government Ethics Act ("the Ethics Act").

I did not find an actual conflict of interest or the potential for a conflict of interest.

The Ethics Act establishes ethical standards for certain public servants, including conflict of interest standards. G.S. 138A-31 prohibits public servants from using their positions for their financial benefit or for the benefit of a member of their extended family or a business with which they are associated. G.S. 138A-36(a) prohibits public servants from participating in certain official actions in which they have an economic interest or if the public servant, a member of the public servant's extended family, or a business with which the public servant is associated would otherwise benefit from that action.

In addition to the conflicts standards noted above, G.S. 138A-32 prohibits public servants from accepting gifts, directly or indirectly (1) from anyone in return for being influenced in the discharge of their official responsibilities, (2) from a lobbyist or lobbyist principal, or (3) from a person or entity which is doing or seeking to do business with the public servant's agency, is regulated or controlled by the public servant's agency, or has particular financial interests that may be affected by the public servant's official actions. Exceptions to the gift rule are set out in G.S. 138A-32(e).

Please contact me if you have any questions concerning my evaluation or the ethical standards governing public servants under the State Government Ethics Act.

Sincerely,

PY Newson/bc

Perry Y. Newson
Executive Director

PYN: bc

cc: Mr. David T. McCoy

Multiple Board Supplement

Statement of Economic Interest

Submit original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27699-1324
Office location: Administration Building, 116 West Jones Street, Room G-068, Raleigh 27601
For assistance please call 919-807-4620 or e-mail: ethics.commission@ncmail.net.

- ▶ The State Government Ethics Act requires that persons covered by the Act file a Statement of Economic Interest ("SEI") on an annual basis and in connection with their appointment to a covered position. The Multiple Board Supplement is for the use of individuals who serve in more than one position covered by the Ethics Act. Although the routine financial information requested on the SEI will not vary by your position, the answers to the questions set forth below will vary by the position held.
- ▶ Please file a complete Statement of Economic Interest ("SEI") with respect to one of your covered positions and a Multiple Board Supplement for any additional covered positions which you hold.

Name of Person Filing SEI

DAVID MCCOY

Position For Which Supplement Filed

STATE CONTROLLER

Other Covered Positions Held

STATE BUDGET OFFICER

Daytime Phone Number

(919) 807-4717

1. If, as of December 31st of the preceding year, you or your employer, or your spouse or other members of your immediate family, or their employer, were licensed or regulated by, or had a business relationship with, a board or employing entity, with which you are or will be associated, please provide the following information.

- ▶ You are not required to complete this question if you are currently a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship
NONE		

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

2. If, as of December 31st of the preceding year, you, your spouse, or other members of your immediate family were a director, officer, or governing board member of any societies, organizations, or advocacy groups which had an interest in issues over which your agency or board may have jurisdiction, please provide the following information.

- ▶ You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.
- ▶ Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)
NONE		

3. During the preceding year (but only the time period after you were appointed, employed, filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") from a donor outside North Carolina and that was related to your public position? If so, and the value of that scholarship from a person or group of persons acting together exceeds \$200, please provide the following information.

- ▶ Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value
NONE DMC.			
Nov 27, 2007	Pew Center on the States Delta Cost Project 1250 H STREET NW, Suite 700 WASHINGTON, DC 20005	Feasibility Study of NATIONAL INITIATIVE RELATED TO BUDGETING 700 FOR POST SECONDARY EDUCATION	0 But Gifted + Room Covered BY THE PEW CENTER ON THE STATES ACTUAL REIMBURSED COSTS WERE \$752.81 COSTS WERE PAID TO STATE OF N.C.

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

4. With respect to the position for which you are filing this Supplement, are you aware of any economic or financial information, in addition to that previously disclosed on your most recent SEI, that is necessary to fully disclose any actual or potential conflicts of interest you may have had during the preceding year or have currently? Yes ☒ No

If so, please provide that information.

Oath or Affirmation

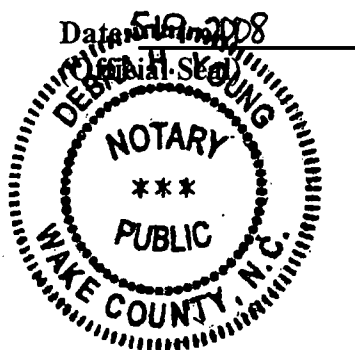
I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Multiple Board Supplement to Statement of Economic Interest and any attachments thereto and that the information provided on this Supplement and any attachments is true, correct, and complete to the best of my knowledge and belief.

David McCoy
Signature of Person Filing

STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by David McCoy
(Name of Person Filing)

Debra H Young
Official Signature of Notary Public



Notary's printed or typed name: Debra H Young

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Statement of Economic Interest

("Long Form")

RECEIVED

APR 14 2008

Mail original to State Ethics Commission, 1324 Mail Service Center, Raleigh, NC 27601
 Office location: Administration Building, 116 West Jones Street, Room G-068, Raleigh 27601
 For assistance please call 919-807-4620 or e-mail: ethics.commission@ncmail.net.
 An electronic version of this form and additional information about its completion is available on the Commission's website at www.ethicscommission.nc.gov.

CONTACT INFORMATION

Name of Person Filing David T. McCoy

Mailing or Home Address 1601 Sugarberry Road
Chapel Hill, North Carolina 27514

Job Title/Employer State Budget Director/Office of the Governor, State of North Carolina

Daytime Phone Number (919) 807-4700

E-Mail Address david.mccoy@ncmail.net

If you are filing because you are serving on or being considered for appointment to a State board, commission, task force, authority, or similar public body ("board"), please list the full name(s) of all boards on which you are serving or to which you are being considered for appointment:

Cherokee Preservation Foundation, Graduate Education Advancement Board, National Association of State Budget Officers, North Carolina Federal Tax Reform Allocation Committee, North Carolina Economic Investment Committee, North Carolina Debt Affordability Advisory Committee, North Carolina Council on Internal Auditing

Please provide the following information concerning your spouse and other members of your immediate family.² If the information requested does not apply, please indicate "none."

Name (First, Last) ³	Occupation	Employer	Business
Robin McCoy	Assistant Superintendent for Curriculum and Instruction	Chatham County Board of Education	Education
Meredith McCoy	Student		UNC-CH
Melissa McCoy	Student		NCSU

¹ With the exception of judicial officers (including Justices or judges of the General Court of Justice, district attorneys, and clerks of court), persons holding or seeking an elected office with a residency requirement must provide a home address.

² Immediate family includes your spouse (unless legally separated) and members of your extended family (your and your spouse's children, grandchildren, parents, grandparents, and siblings, and the spouses of each of those persons) that reside in your household.

³ Judicial officers and candidates for those offices may use the initials of unemancipated children instead of those children's names. If initials are used, the children's names should be provided on a supplemental form available on the Commission's website.

I. \$10,000 PLUS DISCLOSURES

If you, your spouse, or other members of your immediate family have assets or liabilities with a market value of at least \$10,000 in the following categories, please provide the requested information as of December 31st of the preceding year, unless another time period is specified in the question.

- ▶ Do not list the value of those assets or liabilities.
- ▶ Do not list assets or liabilities held in a "blind trust."⁴

REAL ESTATE

1. List all North Carolina real estate in which you, your spouse, or other members of your immediate family have an ownership interest with a market value of \$10,000 or more.

Owner of Real Estate	Location by County and City	% Ownership Interest
David and Robin McCoy	Chapel Hill, Orange County	100%

2. List all North Carolina real estate with a market value of \$10,000 or more that is rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Location by County and City
NONE		

PERSONAL PROPERTY

3. List personal property with a market value of \$10,000 or more that was sold to or purchased from the State by you, your spouse, or other members of your immediate family *within the preceding two years*. Please identify the State agency involved in the purchase or sale of the property.

Identity of Purchaser	Identity of Seller	Nature and Location of Property
NONE		

⁴ A "blind trust" is a trust that meets all of the following criteria: (a) the owner of the trust's assets is unaware of the trust's holdings and sources of income, (b) the individual or entity managing the trust's assets ("the trustee") is not a member of the covered person's extended family and is not associated with or employed by the covered person or his or her immediate family, and (c) the trustee has sole discretion to manage the trust's assets. G.S. 138A-3(1).

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

4. List personal property with a market value of \$10,000 or more that was leased or rented to or from the State by you, your spouse, or other members of your immediate family. Please identify the State agency involved in the property lease.

Identity of Lessor	Identity of Lessee (Renter)	Nature and Location of Property
NONE		

INTERESTS IN PUBLICLY OWNED COMPANIES

5(a). List the name of each publicly owned company in which you, your spouse, or other members of your immediate family own interests valued at \$10,000 or more.

► Do not list ownership interests in a widely held investment fund (including mutual funds, regulated investment companies, or pension or deferred compensation plans) if (i) the fund is publicly traded or its assets are widely diversified and (ii) neither you nor an immediate family member are able to control the assets held in the mutual fund, investment company, or pension or deferred compensation plan.

► Do not disclose the *value* of your interests.

Owner of Interest	Name of Company
NONE	

5(b). List the name of each company in which you, your spouse, or other members of your immediate family hold stock options valued at \$10,000 or more.

► Do not disclose the value of the stock option(s).

► Do not list companies disclosed in response to previous questions.

Owner of Stock Option	Name of Company in which Option is Held
NONE	

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

INTERESTS IN NON-PUBLICLY OWNED COMPANIES OR BUSINESS ENTITIES

6(a). List financial interests valued at \$10,000 or more that you, your spouse, or other members of your immediate family have in a non-publicly owned company or business entity (including interests in partnerships, limited partnerships, joint ventures, limited liability companies, limited liability partnerships, and closely held corporations).

Owner of Interest	Name of Company or Business Entity	Specify if the owner is an officer, employee, owner, director, or partner of the company, or a member or manager of a limited liability company
Robin McCoy	Infohandler.Com	Previously, the Director
David McCoy	Egypt Farms, LLC	Member

6(b). For each of those non-publicly owned companies or business entities identified in question 6(a) (the "primary company"), please list the names of *any other companies* in which the primary company owns securities or equity interests valued at over \$10,000, *if known*.

Non-Publicly Owned Company (the Primary Company)	Other Companies in which the Primary Company Owns Securities or Equity Interests
NONE	

6(c). If you know that any company or business entity listed in 6(a) or (b) above has any material business dealings, contracts, or other involvement *with the State*, or is *regulated by the State*, provide a brief description of that business activity.

Identify Company or Business Entity	Nature of Business Relationship with the State
Infohandler.Com	Provides contractual services in response to RFP's from LEAs

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

VESTED TRUSTS

7. If you, your spouse, or other members of your immediate family are the beneficiaries of a vested trust with a value of \$10,000 or more that is created, established, or controlled *by you*, provide the following information.

► Do not list blind trusts. Please see footnote 4 on page 2 for the definition of "blind trust."

Name & Address of Trustee	Description of the Trust	Your Relationship to the Trust
NONE		

LIABILITIES

8. List each liability of \$10,000 or more incurred by you, your spouse, or other members of your immediate family, excluding indebtedness on your primary personal residence.

Name of Debtor (You, Spouse, Family Member)	Type of Creditor (Commercial Bank, Credit Union, Individual, etc.)
David and Robin McCoy	Commercial Bank
David McCoy	Individual in South Carolina

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

II. OTHER DISCLOSURES

9. If you, your spouse, or other members of your immediate family were at any time during the preceding calendar year (*not* just on December 31) a director, officer, governing board member, employee, independent contractor, or registered lobbyist of a nonprofit corporation or organization operating in the State primarily for religious, charitable, scientific, literary, public health and safety, or educational purposes, provide the following information.

► Do not list State boards or entities, or entities created by a political subdivision of the State.

► If the listed nonprofit corporations or organizations do business with the State or receive State funds, please provide a brief description of the nature of that business, if known, or which with due diligence could reasonably be known.

Identify Person and His/Her Position	Name of Nonprofit Corp. or Organization	Nature of Business	Describe State Business or State Funding
NONE			

10. List the name of each source of income (not specific amounts) of more than \$5,000 received by you, your spouse, or other members of your immediate family during the preceding year if that source was not previously listed in response to questions 1-9. Include salary, wages, professional fees, honoraria, interest, dividends, rental income, and business income. Please do *not* include income received from the following sources:

- Capital gains
- Federal government retirement
- Military retirement
- Social security income

Recipient of Income	Name of Source	Business or Industry	Type of Income
David McCoy	State of N.C.	Government	Salary
Robin McCoy	Chatham County	Education/Government	Salary

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

11. Are you are a practicing attorney? ☒ Yes ☐ No

If so, please check each category of legal representation in which you or the law firm with which you are associated has earned legal fees of \$10,000 or more during the preceding year.

- | | | | |
|---|---|-------------------------------------|-----------------------------------|
| <input type="checkbox"/> Administrative | <input type="checkbox"/> Admiralty | <input type="checkbox"/> Corporate | <input type="checkbox"/> Criminal |
| <input type="checkbox"/> Decedents' Estates | <input type="checkbox"/> Environmental | <input type="checkbox"/> Insurance | <input type="checkbox"/> Labor |
| <input type="checkbox"/> Local Government | <input type="checkbox"/> Real Property | <input type="checkbox"/> Securities | <input type="checkbox"/> Tax |
| <input type="checkbox"/> Tort litigation (including negligence) | <input type="checkbox"/> Utilities regulation | | |

12. Are you a licensed professional (other than an attorney) or do you provide consulting services individually or as a member of a professional association? ☐ Yes ☒ No If so, provide the following information for those services for which you charged or were paid over \$10,000 during the preceding year.

Type of Business	Nature of Services Rendered

13. If, as of December 31st of the preceding year, you or your employer, or your spouse or other members of your immediate family, or their employer, were licensed or regulated by, or had a business relationship with, a board or employing entity with which you are or will be associated, please provide the following information.

► You are not required to complete this question if you are currently a legislator or a judicial officer ("judicial officer" is defined in footnote 1) or you are filing as an appointee to those offices. Please indicate if this is the case.

Identify Person	Identify Employer (if applicable)	Business or Regulatory Relationship
NONE		

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

14. If, as of December 31st of the preceding year, you, your spouse, or other members of your immediate family were a director, officer, or governing board member of any societies, organizations, or advocacy groups which had an interest in issues over which your agency or board may have jurisdiction, please provide the following information.

► You are not required to complete this question if you are a legislator or a judicial officer or you are filing as an appointee to those offices. Please indicate if this is the case.

► Do not list organizations of which you are only a member.

Identify Person	Identify Name of Society, Organization, or Advocacy Group	Leadership Position (Director, Officer, Board Member)
David McCoy	Graduate Education Advancement Board	Board Member

15. Have you ever been convicted of a felony for which you have not received either (i) a pardon of innocence or (ii) an order of expungement regarding that conviction? ___ Yes ☒ No
If yes, please provide the following information.

Offense	Date of Conviction	County and State of Conviction
NONE		

16. During any calendar quarter in the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), did you receive any gifts *while both you and the donor were outside North Carolina* and under circumstances that would lead a reasonable person to conclude that the gifts were given for the purpose of lobbying?

If so, and the total value of those gifts from a person or a group of persons acting together exceeds \$200 per quarter, please provide the following information.

► Do not report gifts given by members of your extended family.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date Item Received	Name and Address of Donor(s)	Describe Items Received	Estimated Market Value
NONE			

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

17. During the preceding year (but only the time period after you were appointed, employed, or filed or were nominated as a candidate), have you accepted a "scholarship" (a "grant-in-aid to attend a conference, meeting, or similar event") *from a donor outside North Carolina* and that was related to your public position? If so, and the value of that scholarship from a person or group of persons acting together exceeds \$200, please provide the following information.

► Do not report gifts that have previously been reported by you to the Department of the Secretary of State on the "Expense Report for Exempted or Persons Not Covered."

Date of Scholarship	Name and Address of Donor(s)	Describe Event	Estimated Market Value
NONE			

18. Are you or a member of your immediate family currently registered as a lobbyist or lobbyist principal or have you been registered as such within the preceding 12 months? ___ Yes ☒ No
If so, please provide the following information.

Name of Lobbyist	Lobbyist's Principal	Date of Registration	Registration Expiration

19. Are you aware of any other economic or financial information necessary to fully disclose any actual or potential conflicts of interest you may have had during the preceding year or have currently? ___ Yes ☒ No

If so, please provide that information. Please indicate "none" if you do not have any additional information to disclose.

NONE

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

Please ensure that you have responded to all questions, *specifically including question number 19*, and that you have stated "None" in response to those questions in which you have nothing to disclose. In the event you fail to answer a question, your disclosure statement will be returned and you will be required to correct any deficiencies, reaffirm the content of the form, and have the reaffirmation notarized.

**** North Carolina law establishes a fine of \$250 for failure to timely file a complete Statement of Economic Interest. In addition, it is a Class 1 misdemeanor to knowingly conceal or fail to disclose required information, and a Class H felony to provide false information on a Statement. Such actions can also subject you to disciplinary action in connection with your employment.****

Oath or Affirmation

I hereby swear or affirm, under penalty of perjury and other penalties established by North Carolina law, that I have read this Statement of Economic Interest and any attachments thereto and that the information provided on the Statement and any attachments is true, correct, and complete to the best of my knowledge and belief. I also certify that I have not transferred, and will not transfer, any asset, interest, or property for the purpose of concealing it from disclosure while retaining an equitable interest.

David McCoy
Signature of Person Filing

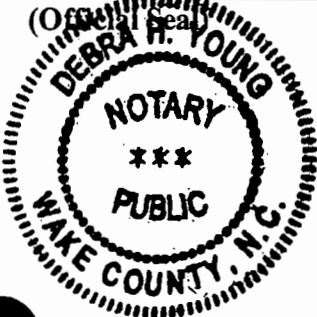
STATE OF NORTH CAROLINA
COUNTY OF Wake

Signed and sworn to or affirmed before me this day by

David McCoy
(Name of Person Filing)

Date: 4-14-2008
(Official Seal)

Debra H. Young
Official Signature of Notary Public



Notary's printed or typed name:

Debra H Young

My Commission Expires:

10-29-2012.

IF YOU DO NOT HAVE INFORMATION TO DISCLOSE IN RESPONSE TO A PARTICULAR QUESTION, PLEASE INDICATE "NONE."

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, May 28, 2008

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

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

S.B.	1695	Vehicle Size and Weight Changes.	
		Draft Number:	PCS35588
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

PUBLIC BILL

S.B. **1695**

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PERSONS WHO HOLD A CLASS C LICENSE TO OPERATE SPECIFIED VEHICLE AND BOAT TRAILER COMBINATIONS; TO PROVIDE DIRECTION FOR THE OPERATION OF SEMITRAILERS OF NOT MORE THAN FIFTY-THREE FEET ON PRIMARY ROADS IN THIS STATE; TO INCREASE THE ALLOWABLE AXLE AND TOTAL WEIGHT OF SELF-PROPELLED, SELF-LOADING BEDS FOR COTTON TRANSPORT FROM FARM TO GIN, REGARDLESS OF AXLE WEIGHT; TO REMOVE THE WIDTH RESTRICTION ON FARM EQUIPMENT THAT IS SELF-PROPELLED, HAULED, OR PULLED ON A PUBLIC HIGHWAY, AND TO INCREASE THE WIDTH OF BOATS THAT MAY BE TRANSPORTED ON THE PRIMARY HIGHWAY ROUTES DURING THE DAY AND NIGHT WITH A PERMIT AND TO INCREASE THE WIDTH OF BOATS AND TRAILERS THAT MAY BE TRANSPORTED OR HAULED ON A PRIMARY HIGHWAY ROUTE WITH A PERMIT DURING THE DAYLIGHT HOURS ONLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Senator(s)

[Signature]
Jenkins

Tillman

[Signature]
F. Tillman

Preston

[Signature]
Preston

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING

MAY 21 2008

AND REFERRED TO COMMITTEE

ON

Commerce, Small

Bus & Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 1695

Short Title: Vehicle Size and Weight Changes.

(Public)

Sponsors: Senators Jenkins, Tillman and Preston.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PERSONS WHO HOLD A CLASS C LICENSE TO OPERATE SPECIFIED VEHICLE AND BOAT TRAILER COMBINATIONS; TO PROVIDE DIRECTION FOR THE OPERATION OF SEMITRAILERS OF NOT MORE THAN FIFTY-THREE FEET ON PRIMARY ROADS IN THIS STATE; TO INCREASE THE ALLOWABLE AXLE AND TOTAL WEIGHT OF SELF-PROPELLED, SELF-LOADING BEDS FOR COTTON TRANSPORT FROM FARM TO GIN, REGARDLESS OF AXLE WEIGHT; TO REMOVE THE WIDTH RESTRICTION ON FARM EQUIPMENT THAT IS SELF-PROPELLED, HAULED, OR PULLED ON A PUBLIC HIGHWAY, AND TO INCREASE THE WIDTH OF BOATS THAT MAY BE TRANSPORTED ON THE PRIMARY HIGHWAY ROUTES DURING THE DAY AND NIGHT WITH A PERMIT AND TO INCREASE THE WIDTH OF BOATS AND TRAILERS THAT MAY BE TRANSPORTED OR HAULED ON A PRIMARY HIGHWAY ROUTE WITH A PERMIT DURING THE DAYLIGHT HOURS ONLY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(a)(3) reads as rewritten:

"(3) Class C. – A Class C license authorizes the holder to drive any of the following:

- a. A Class C motor vehicle that is not a commercial motor vehicle.
- b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.
- c. A combination of motor vehicles that has a combined actual weight of less than 26,001 pounds, and includes as part of the combination a boat and boat trailer, or a boat trailer."

SECTION 2. G.S. 20-115.1(b) reads as rewritten:

"(b) Motor vehicle combinations consisting of a semitrailer of not more than 53 feet in length and a truck tractor may be operated on the interstate highways (except those exempted by the United States Secretary of Transportation pursuant to 49 U.S.C. 2311(i)) and federal aid primary system highways designated by the United States Secretary of Transportation all primary highway routes of North Carolina provided that:

(1) Any semitrailer in excess of 48 feet in length shall not be permitted unless:

a. The distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 41 feet; or

b. The semitrailer is used exclusively or primarily to transport vehicles in connection with motorsports competition events, and the distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 46 feet; and

(2) Any semitrailer in excess of 48 feet is equipped with a rear underride guard of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 30 inches from the surface as measured with the vehicle empty and on a level surface."

SECTION 3. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Motor vehicle combinations of one semitrailer of not more than 48-53 feet in length and a truck tractor (power unit) may exceed the 60-foot maximum length. Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers may tow a truck, combination tractor and trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not

1 apply to trailers not exceeding three in number drawn by a motor vehicle used by
2 municipalities for the removal of domestic and commercial refuse and street rubbish,
3 but such combination of vehicles shall not exceed a total length of 50 feet inclusive of
4 front and rear bumpers. Provided further, that the said limitation that no combination of
5 vehicles coupled together shall consist of more than two units shall not apply to a
6 combination of vehicles coupled together by a saddle mount device used to transport
7 motor vehicles in a driveway service when no more than three saddle mounts are used
8 and provided further, that equipment used in said combination is approved by the safety
9 regulations of the Federal Highway Administration and the safety rules of the
10 Department of Crime Control and Public Safety."

11 **SECTION 4.** G.S. 20-116(j) reads as rewritten:

12 "(j) Nothing in this section shall be construed to prevent the operation of
13 Self-propelled self-propelled grain combines or other farm equipment self-propelled,
14 pulled-pulled, hauled, or otherwise, not exceeding 18 feet in width may be operated on
15 any highway, except a highway or section of highway that is a part of the National
16 System of Interstate and Defense Highways. Farm equipment includes a vehicle that is
17 designed exclusively to transport compressed seed cotton from a farm to a gin and has a
18 self-loading bed. All such combines or equipment which exceed 10 feet in width may be
19 so operated only under the following conditions:

- 20 (1) Said equipment may only be so operated during daylight hours.
- 21 (2) Said equipment must display a red flag on front and rear, said flags
22 shall not be smaller than three feet wide and four feet long and be
23 attached to a stick, pole, staff, etc., not less than four feet long and
24 shall be so attached to said equipment as to be visible from both
25 directions at all times while being operated on the public highway for
26 not less than 300 feet.
- 27 (3) Equipment covered by this section, which by necessity must travel
28 more than 10 miles or where by nature of the terrain or obstacles the
29 flags referred to in subdivision (2) are not visible from both directions
30 for 300 feet at any point along the proposed route, must be preceded at
31 a distance of 300 feet and followed at a distance of 300 feet by a
32 flagman in a vehicle having mounted thereon an appropriate warning
33 light or flag. No flagman in a vehicle shall be required pursuant to this
34 subdivision if the equipment is being moved under its own power or
35 on a trailer from any field to another field, or from the normal place of
36 storage of the vehicle to any field, for no more than ten miles and if
37 visible from both directions for 300 feet at any point along the
38 proposed route.
- 39 (4) Every such piece of equipment so operated shall operate to the right of
40 the center line when meeting traffic coming from the opposite
41 direction and at all other times when possible and practical.
- 42 (5) Violation of this section shall not constitute negligence per se.
- 43 (6) When said equipment is causing a delay in traffic, the operator of said
44 equipment shall move the equipment off the paved portion of the

highway at the nearest practical location until the vehicles following said equipment have passed."

SECTION 5. G.S. 20-116 is amended by adding a new subsection to read:

"§ 20-116. Size of vehicles and loads.

...

(m) Notwithstanding any other provision of this section, the towing of any boat or boat trailer in excess of 102 inches in width but less than 120 inches shall not require a permit to be issued pursuant to the requirements of G.S. 20-119 and may take place on any day of the week, including weekends and holidays, and may take place at night. With a properly issued permit, the towing of any boat or boat trailer of 120 inches or more in width may take place on any day of the week, including weekends and holidays, but shall not take place at night."

SECTION 6. G.S. 20-118(c)(12) reads as rewritten:

"(12) Subsections (b) and (e) of this section do not apply to a vehicle that (i) ~~is hauling agricultural crops from the farm where they were grown to first market,~~ (ii) ~~is within 35 miles of that farm,~~ (iii) ~~does not operate on an interstate highway or posted bridge while hauling the crops, and meets one of the following descriptions:~~meets all of the conditions set out below:

a. ~~Is a five-axle combination with a gross weight of no more than 90,000 pounds, a single-axle weight of no more than 22,000 pounds, a tandem-axle weight of no more than 42,000 pounds, and a length of at least 51 feet between the first and last axles of the combination.~~Is hauling agricultural crops from the farm where the crop is grown to the closest market.

b. Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s. 13.

(b1) Does not operate on an interstate highway or exceed any posted bridge weight limits during transportation or hauling of agricultural products.

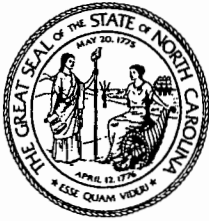
c. ~~Is a four-axle combination with a gross weight that does not exceed the limit set in subdivision (b)(3) of this section,~~Does not exceed a single-axle weight of no more than 22,000 pounds, and a tandem-axle weight of no more than 42,000 pounds.~~pounds, or a gross weight of 90,000 pounds."~~

SECTION 7. G.S. 20-118(k) reads as rewritten:

"(k) From September 1 through March 1 of each year, a vehicle which is equipped with a self-loading bed and which is designed and used exclusively to transport compressed seed cotton from the farm to a cotton gin may operate on the highways of the State, except interstate highways, ~~with a tandem-axle weight not exceeding 44,000 pounds.~~not exceeding 64,000 pounds regardless of axel weight. Such vehicles shall be exempt from light-traffic road limitations only from point of origin on the light-traffic road to the nearest State-maintained road which is not posted to prohibit the

1 transportation of statutory load limits. This exemption does not apply to restricted,
2 posted bridge structures."

3 **SECTION 8.** This act is effective when it becomes law.



SENATE BILL 1695: Vehicle Size and Weight Changes

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	May 27, 2008
Introduced by:	Sen. Jenkins	Summary by:	Giles S. Perry
Version:	PCS to First Edition S1695-CSRW-70[v.5]		Committee Counsel

SUMMARY: *Senate Bill 1695 (PCS) makes several changes to the State's vehicle size and weight statutes, as recommended by the Joint legislative Transportation Oversight Committee.*

BILL ANALYSIS:

Drivers License Necessary for Boat Trailers

Section 1 of the act authorizes persons who hold a Class C drivers license to operate vehicle and boat trailer combinations with an actual combined weigh of less than 26,001 lbs.

Use of Farmer License Plates

Section 2 of the act authorizes vehicles with farmer license plates to operate for farm-related activities. This change clarifies that an empty farm truck returning to its point of origin after unloading, or operating in some other farm-related activity, is authorized under State law.

Semitrailer Length

Section 3 specifies that when the Department of Transportation is considering adding an authorized 53 ft. semitrailer or twin trailer route, municipal concurrence is required only if the municipality can demonstrate a verifiable safety concern.

Section 4 and 5 provides that semitrailers of not more than 53 feet in length may be operated on all primary routes of the State.

Operation of Combines and Other Farm Equipment

Section 6 provides that self-propelled grain combines or other self-propelled or pulled farm equipment not exceeding 25 feet in width may be operated on any highway, except interstates and fully controlled access highways.

Boats and Boat Trailers

Section 7 authorizes the towing, with a permit, of any boat or boat trailer over 102 inches in width, on any day and at night. This section also authorizes the towing, with a permit, of a boat and trailer of 120 inches or more in width on any day, but not at night.

Senate Bill 1695

Page 2

Agricultural Crops Weight Changes

Section 8 authorizes vehicle hauling agricultural crops from the farm to market to have an exception to the usual weight limits, up to the following weights: single axle weight up to 22,000 lbs. tandem axle weight up to 42,000 lbs., and a gross weight of up to 90,000 lbs. This exception would not apply to interstates or posted bridges.

Section 9 authorizes certain vehicles operating from September 1 through March 1 and transporting compressed seed cotton to have a gross vehicle weight not to exceed 64,000 lbs. This exception would not apply to interstates or posted bridges.

Vehicles Transporting Raw Logs to First Market

Section 10 authorizes vehicles transporting raw logs to first market to exceed the maximum gross weight otherwise authorized by 4,000 lbs., to have a single axle-weight of up to 22,000 lbs., and a tandem axle weight of up to 42,000 lbs.

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

SI695e1-SMRW-CSRW-70v5

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1695

PROPOSED COMMITTEE SUBSTITUTE S1695-CSRW-70 [v.5]

5/27/2008 10:25:15 AM

Short Title: Vehicle Size and Weight Changes.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PERSONS WHO HOLD A CLASS C LICENSE TO OPERATE SPECIFIED VEHICLE AND BOAT TRAILER COMBINATIONS; TO AUTHORIZE VEHICLES WITH FARMER LICENSE PLATES TO OPERATE FOR FARM-RELATED ACTIVITIES; TO SPECIFY WHEN MUNICIPAL CONCURRENCE IS NECESSARY FOR DESIGNATION OF CERTAIN TRUCK ROUTES; TO PROVIDE THAT FIFTY-THREE FOOT SEMITRAILERS MAY OPERATE ON PRIMARY HIGHWAYS; TO PROVIDE THAT COMBINES UP TO TWENTY-FIVE FEET IN WIDTH MAY BE OPERATED ON SPECIFIED HIGHWAYS; TO CHANGE THE WIDTH LIMITS AND AUTHORIZED TIME OF OPERATION FOR THE TOWED BOAT TRAILERS; TO INCREASE SPECIFIED WEIGHT LIMITS FOR VEHICLES HAULING AGRICULTURAL CROPS AND COMPRESSED SEED COTTON; AND TO MODIFY THE WEIGHT EXCEPTION FOR VEHICLES TRANSPORTING RAW LOGS TO FIRST MARKET, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-7(a)(3) reads as rewritten:

"(3) Class C. – A Class C license authorizes the holder to drive any of the following:

- a. A Class C motor vehicle that is not a commercial motor vehicle.
- b. When operated by a volunteer member of a fire department, a rescue squad, or an emergency medical service (EMS) in the performance of duty, a Class A or Class B fire-fighting, rescue, or EMS motor vehicle or a combination of these vehicles.

- c. A combination of motor vehicles that has a combined actual weight of less than 26,001 pounds, and includes as part of the combination a boat and boat trailer, or a boat trailer."

SECTION 2. G.S. 20-88(b)(3) reads as rewritten:

- "(3) License plates issued at the farmer rate shall be placed upon trucks and truck-tractors that are operated exclusively in the carrying or transportation of applicant's farm products, raised or produced on his farm, and farm ~~supplies-supplies~~, or for farm-related activities, and not operated in hauling for hire."

SECTION 3. G.S. 20-115.1(g) reads as rewritten:

(g) Under certain conditions, and after consultation with the Joint Legislative Commission on Governmental Operations, the North Carolina Department of Transportation may designate State highway system roads in addition to those highways designated by the United States Secretary of Transportation for use by the vehicle combinations authorized in this section. Such designations by the Department shall only be made under the following conditions:

- (1) A determination of the public convenience and need for such designation;
- (2) A traffic engineering study which clearly shows the road proposed to be designated can safely accommodate and has sufficient capacity to handle these vehicle combinations; and
- (3) A public hearing is held or the opportunity for a public hearing is provided in each county through which the designated highway passes, after two weeks notice posted at the courthouse and published in a newspaper of general circulation in each county through which the designated State highway system road passes, and consideration is given to the comments received prior to the designation.
- (4) The Department may designate routes for one particular type of STAA (Surface Transportation Assistance Act) dimensioned vehicle when significant, substantial differences in their operating characteristics exist.

No portion of the State highway system within municipal corporate limits may be designated by the Department without concurrence by the municipal governing ~~body-body~~, if the municipality can demonstrate a verifiable safety concern with the designation. Also, the Department may not designate any portion of the State highway system that has been deleted or exempted by the United States Secretary of Transportation based on safety considerations. For the purpose of this section, any highway designated by the Department shall be deemed to be the same as a federal-aid primary highway designated by the United States Secretary of Transportation pursuant to 49 USC 2311 and 49 USC 2316, and the vehicle combinations authorized in this section shall be permitted to operate on such highway."

SECTION 4. G.S. 20-115.1(b) reads as rewritten:

"(b) Motor vehicle combinations consisting of a semitrailer of not more than 53 feet in length and a truck tractor may be operated on ~~the interstate highways (except~~

those exempted by the United States Secretary of Transportation pursuant to 49 U.S.C. 2311(i)) and federal aid primary system highways designated by the United States Secretary of Transportation all primary highway routes of North Carolina provided that:

(1) Any semitrailer in excess of 48 feet in length shall not be permitted unless:

a. The distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 41 feet; or

b. The semitrailer is used exclusively or primarily to transport vehicles in connection with motorsports competition events, and the distance between the kingpin of the trailer and the rearmost axle, or a point midway between the two rear axles, if the two rear axles are a tandem axle, does not exceed 46 feet; and

(2) Any semitrailer in excess of 48 feet is equipped with a rear underride guard of substantial construction consisting of a continuous lateral beam extending to within four inches of the lateral extremities of the semitrailer and located not more than 30 inches from the surface as measured with the vehicle empty and on a level surface."

SECTION 5. G.S. 20-116(e) reads as rewritten:

"(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Motor vehicle combinations of one semitrailer of not more than 48-53 feet in length and a truck tractor (power unit) may exceed the 60-foot maximum length. Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers may tow a truck, combination tractor and trailer, trailer, or any other disabled vehicle or combination of vehicles to a place for repair, parking, or storage within 50 miles of the point where the vehicle was disabled and may tow a truck, tractor, or other replacement vehicle to the site of the disabled vehicle. Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish,

1 but such combination of vehicles shall not exceed a total length of 50 feet inclusive of
2 front and rear bumpers. Provided further, that the said limitation that no combination of
3 vehicles coupled together shall consist of more than two units shall not apply to a
4 combination of vehicles coupled together by a saddle mount device used to transport
5 motor vehicles in a driveway service when no more than three saddle mounts are used
6 and provided further, that equipment used in said combination is approved by the safety
7 regulations of the Federal Highway Administration and the safety rules of the
8 Department of Crime Control and Public Safety."

9 **SECTION 6.** G.S. 20-116(j) reads as rewritten:

10 "(j) Nothing in this section shall be construed to prevent the operation of
11 Self-propelled self-propelled grain combines or other farm equipment self-propelled,
12 pulled-pulled, or otherwise, not exceeding 18 25 feet in width may be operated on any
13 highway, except a highway or section of highway that is a fully controlled access
14 highway or is a part of the National System of Interstate and Defense Highways. Farm
15 equipment includes a vehicle that is designed exclusively to transport compressed seed
16 cotton from a farm to a gin and has a self-loading bed. All such combines or equipment
17 which exceed 10 feet in width may be so operated only under the following conditions:

- 18 (1) Said equipment may only be so operated during daylight hours.
- 19 (2) Said equipment must display a red flag on front and rear, said flags
20 shall not be smaller than three feet wide and four feet long and be
21 attached to a stick, pole, staff, etc., not less than four feet long and
22 shall be so attached to said equipment as to be visible from both
23 directions at all times while being operated on the public highway for
24 not less than 300 feet.
- 25 (3) Equipment covered by this section, which by necessity must travel
26 more than 10 miles or where by nature of the terrain or obstacles the
27 flags referred to in subdivision (2) are not visible from both directions
28 for 300 feet at any point along the proposed route, must be preceded at
29 a distance of 300 feet and followed at a distance of 300 feet by a
30 flagman in a vehicle having mounted thereon an appropriate warning
31 light or flag. No flagman in a vehicle shall be required pursuant to this
32 subdivision if the equipment is being moved under its own power or
33 on a trailer from any field to another field, or from the normal place of
34 storage of the vehicle to any field, for no more than ten miles and if
35 visible from both directions for 300 feet at any point along the
36 proposed route.
- 37 (4) Every such piece of equipment so operated shall operate to the right of
38 the center line when meeting traffic coming from the opposite
39 direction and at all other times when possible and practical.
- 40 (5) Violation of this section shall not constitute negligence per se.
- 41 (6) When said equipment is causing a delay in traffic, the operator of said
42 equipment shall move the equipment off the paved portion of the
43 highway at the nearest practical location until the vehicles following
44 said equipment have passed."

1 **SECTION 7.** G.S. 20-116 is amended by adding a new subsection to read:
2 "**§ 20-116. Size of vehicles and loads.**

3 ...
4 (m) Notwithstanding any other provision of this section, the towing of any boat or
5 boat trailer in excess of 102 inches in width shall require a permit to be issued pursuant
6 to the requirements of G.S. 20-119 and may take place on any day of the week,
7 including weekends and holidays, and may take place at night. With a properly issued
8 permit, the towing of any boat or boat trailer of 120 inches or more in width may take
9 place on any day of the week, including weekends and holidays, but shall not take place
10 at night."

11 **SECTION 8.** G.S. 20-118(c)(12) reads as rewritten:

12 "(12) Subsections (b) and (e) of this section do not apply to a vehicle that (i)
13 ~~is hauling agricultural crops from the farm where they were grown to~~
14 ~~first market, (ii) is within 35 miles of that farm, (iii) does not operate~~
15 ~~on an interstate highway or posted bridge while hauling the crops, and~~
16 ~~meets one of the following descriptions:~~meets all of the conditions set
17 ~~out below:~~

18 a. ~~Is a five-axle combination with a gross weight of no more than~~
19 ~~90,000 pounds, a single axle weight of no more than 22,000~~
20 ~~pounds, a tandem axle weight of no more than 42,000 pounds,~~
21 ~~and a length of at least 51 feet between the first and last axles of~~
22 ~~the combination.~~Is hauling agricultural crops from the farm
23 ~~where the crop is grown to the closest market.~~

24 b. ~~Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 761, s.~~
25 ~~13.~~

26 (b1) Does not operate on an interstate highway or exceed any posted
27 ~~bridge weight limits during transportation or hauling of~~
28 ~~agricultural products.~~

29 c. ~~Is a four-axle combination with a gross weight that does not~~
30 ~~exceed the limit set in subdivision (b)(3) of this section.~~Does
31 ~~not exceed a single-axle weight of no more than 22,000 pounds,~~
32 ~~and a tandem-axle weight of no more than 42,000~~
33 ~~pounds.~~pounds, or a gross weight of 90,000 pounds."

34 **SECTION 9.** G.S. 20-118(k) reads as rewritten:

35 "(k) From September 1 through March 1 of each year, a vehicle which is equipped
36 with a self-loading bed and which is designed and used exclusively to transport
37 compressed seed cotton from the farm to a cotton gin may operate on the highways of
38 the State, except interstate highways, ~~with a tandem axle weight not exceeding 44,000~~
39 ~~pounds.~~not exceeding 64,000 pounds gross vehicle weight regardless of axle weight.
40 Such vehicles shall be exempt from light-traffic road limitations only from point of
41 origin on the light-traffic road to the nearest State-maintained road which is not posted
42 to prohibit the transportation of statutory load limits. This exemption does not apply to
43 restricted, posted bridge structures."

44 **SECTION 10.** G.S. 20-118(c)(15) reads as rewritten:

1 "(15) Subsections (b) and (e) of this section do not apply to a vehicle or
2 vehicle combination that meets all of the conditions below, but all
3 other enforcement provisions of this Article remain applicable:

- 4 a. Is hauling wood residuals, including wood chips, sawdust,
5 mulch, or tree bark from any site; is hauling raw logs to first
6 market; or is transporting bulk soil, bulk rock, sand, sand rock,
7 or asphalt millings from a site that does not have a certified
8 scale for weighing the vehicle.
- 9 b. Does not operate on an interstate highway, a posted light-traffic
10 road, except as provided by subdivision (c)(5) of this section, or
11 a posted bridge.
- 12 c. Does not exceed a maximum gross weight 4,000 pounds in
13 excess of what is allowed in subsection (b) of this section.
- 14 d. Does not exceed a single-axle weight of more than 22,000
15 pounds and a tandem-axle weight of more than 42,000 pounds."

16 **SECTION 11.** This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Tuesday - May 27,
2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Bob Stearn

NC Forestry Assoc.

Hannah Polikov

UNC SOG

Amee Wall

UNC SOG

Doug Doreen

NC Assoc. Professional Loggers

Thomas C. Caves, Jr.

NC Dept. of Crime Control & Public Safety

William H. H. H.

Fitzgen Bank

Heather Hooks

East Union Middle School

Bilivia Funderburk

East Union Middle School

Nekha Loney

East Union Middle School

Bruce D. Rushing

East Union Middle School

Billy Carter

NC Cotton Producers Assoc

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Tuesday - May 27,
2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jay Boyette	NC Farm Bureau Fed
Paul Sherman	NCFB
BB Griffin	Woodville Supply Inc. P.O. Box 490 Lewiston NC
Kevin Plue	East Union MS - Union County Public Sch
Lisa Randall	2343 Pleasant Cr. Ch Rd Marshville NC 28103
Angela Bush	East Union Middle - Marshville
Angie Whitener	NC Pork Council
Dennis Patterson	OSC
Kim Crouch	NC Bar Assn
Daniel Rahn	Kennedy Convention
STEVE VARNEDORE	NCDOT

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Tuesday - 4 May 27,
2008

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NAME _____

FIRM OR AGENCY AND ADDRESS

Elizabeth Dalton

Neena

Charlie Diehl

NC Trucking Association

Linda Andrews

NC FB

bbd

7070

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Thursday - 4 May 27,
2008

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NAME

FIRM OR AGENCY AND ADDRESS

Arms & Ammunition

NC DOT

Bill Pittman

The Pittman Loan Firm

John Bowditch

Astrazenska

Barbara Cavale

BR 6

Kelly

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VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Tuesday - 4 May 27,
2008

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NAME

FIRM OR AGENCY AND ADDRESS

Cam Cice

B P MHC

Whitney Woodward

AP

Susan Valcueri

Nationmura

Charles Perune

OSBM

Cassandra White

Gov. Office

James Gheen

intern

Jim LORA

OSBM

Butch Gunnells

NC Beverage Association

George Seddath

PBV

Henry Hutor

N.C. B. A.

Patrick Buffkin

Nelson Mullins

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Tuesday - May 27,
2008

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NAME

FIRM OR AGENCY AND ADDRESS

Mercedes Shine	East Union Middle
Belynda Horne	East Union Middle Staff
Jahaiq Hammonds	East Union Middle
Stacey Montgomery	East Union Middle
Cliff Venable	Gas Office
Camern Henley	Electricities of NC
Karen Salmon	Electricities
Joyce Peters	JP Associates
Nolan Davis	East Union Middle School
Shaunda Clyburn	East Union Middle School
Jim Stegall	UCPS

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Thursday - 4 May 27,
 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andrew Cagle	Bone and Pless
Frank Bone	Bone & Pless
Anonymous	None
Kevin Lacy	NCDOT
Chris P. Linn	Pio Linn
Will Puller	Lt. Gov.
Stephen Rintoul	UNC-TV
Chris Barber	CAPP
Johanna Reese	DOT
JOHN GOODMAN	NC CHAMBER
JOHN MCALISTER	"

Principal Clerk
Reading Clerk

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 3, 2008	11:00 AM	1027 LB

PRESENTATION BY THE COMMISSIONER OF BANKS, JOSEPH SMITH

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1697	Toll Road Enforcement/Authority Changes.	Senator Jenkins
SB 1698	Express Permitting Review Program.	Senator Jenkins
SB 1797	State Tire Contract.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

**Senate Commerce, Small Business and Entrepreneurship
Committee**

**Tuesday, June 3, 2008, 11:00 AM
1027 LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Presentation by the Commissioner of Banks, Joseph Smith

Bills

SB 1697	Toll Road Enforcement/Authority Changes.	Senator Jenkins
SB 1698	Express Permitting Review Program.	Senator Jenkins
SB 1797	State Tire Contract.	Senator Jenkins

Presentations

Other Business

Adjournment

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, June 3, 2008
Room 1027, Legislative Building


MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met on Tuesday, June 3, 2008, at 11:00 a.m. in Room 1027 of the Legislative Building. Twenty three members of the Committee were present. Pages assisting with the meeting were: Roman Blount IV, Greensboro, sponsored by Senator Dorsett; Allie Glenn, Maggie Weatherly, Greensboro, and Branna Williams, North Wilkesboro, sponsored by Senator Hagan.

Senator Soles welcomed and introduced Joseph Smith, Commissioner of Banks. Commissioner Smith presented a slide presentation entitled "Mortgage Meltdown." The Commissioner addressed the issues relative to the mortgage crisis, sub prime lending issues, and other banking matters impacting North Carolina. Senator Soles recognized Mark Pearce, Office of the Commissioner of Banks, who made additional comments regarding these issues. After a question and answer period, Senator Soles thanked Commissioner Smith for sharing this very important information with the committee.

Senator Soles stated that the next order of business would be to consider S.B. 1797, State Tire Contract, sponsored by Senator Jenkins. He recognized Senator Dorsett who moved for adoption of the committee substitute bill. Motion carried. Senator Soles called on Senator Jenkins to explain the bill. He then recognized Mr. Ralph Edelberg, Chief Standards Engineer of the Office of Purchase and Contract, who spoke in opposition to the bill.

Senator Phil Berger moved for a favorable report of the committee substitute bill. The meeting adjourned at 12:02 p.m.



Senator R. C. Soles, Jr., Chairman

Ramona Fitzgerald, Committee Clerk

S.B. 1697
ID N 2315

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Senator(s)

Jenkins

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING

MAY 21 2008

AND REFERRED TO COMMITTEE

ON *Commerce, Small*

Bus & Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1697*

Short Title: Toll Road Enforcement/Authority Changes.

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Toll Enforcement.

"§ 20-400. Definitions.

Unless the context requires otherwise, the following definitions apply to this Article to the defined words and phrases and their cognates:

- (1) Authority. – The North Carolina Turnpike Authority acting directly or through its duly authorized officers or agents to collect tolls or fees for the use of any road, bridge, or tunnel designated as a toll facility.
- (2) Processing agent. – A person or a public or private agency authorized by the Authority, responsible for the processing of the notices of unpaid tolls pursuant to this Article.
- (3) Toll enforcement officer. – A person authorized by the Authority to review and issue toll evasion citations and penalties in accordance with this Article and the operating procedures of the Authority.
- (4) Toll evasion violation. – The use of a toll facility without payment of tolls as set and established by the Authority.
- (5) Toll facility. – Any road, bridge, or tunnel for which tolls or fees may be charged for the use thereof pursuant to Article 6H of Chapter 136 of the General Statutes.

"§ 20-401. Payment of toll on toll facility required.

1 (a) A person shall not use a toll facility without payment of tolls as established in
2 accordance with the operating procedures of the Authority.

3 (b) If a vehicle is determined by automated or electronic imaging devices, visual
4 observation, or otherwise to have operated on a toll facility without payment of a toll,
5 the owner of the vehicle may be issued a notice of unpaid toll by the Authority, or a
6 processing agent, within 72 hours of the toll facility use.

7 (1) The notice shall specifically set forth the following:

- 8 a. The approximate date, time, and segment or segments of the toll
9 facility or facilities used.
10 b. The image of the vehicle registration plate when an electronic
11 image is available.
12 c. If practicable, the registration expiration date and the make of
13 the vehicle.
14 d. The amount of the toll and any processing fee due.
15 e. The date payment is due and information regarding how
16 payment may be made.
17 f. A clear and concise explanation of the procedures for contesting
18 the toll and appealing an adverse decision.

19 (2) The notice shall be processed by officials or agents of the Authority, or
20 a processing agent, and shall be forwarded by personal service or first
21 class mail to the address given on the motor vehicle registration.

22 (3) If accurate information concerning the identity and address of the
23 registered owner of the vehicle is not available to the processing agent
24 within 30 days of the violation, the Authority or processing agent shall
25 have an additional 45 calendar days to obtain such information and
26 forward the notice of unpaid toll.

27 (4) Where the registered owner is a repeat violator, the processing agent
28 may forward the notice of unpaid toll within 90 calendar days of the
29 violation. 'Repeat violator' means any registered owner that has had
30 more than five violations issued pursuant to this section in any 30-day
31 period within the preceding 12-month period. Notwithstanding this
32 section, a law enforcement officer may issue a citation as appropriate
33 pursuant to this Chapter to a repeat violator when the officer observes
34 such individual immediately operating a vehicle, identified in five or
35 more violations, on a toll facility.

36 (c) If the owner fails to comply with the direction on the notice of unpaid toll by
37 failing to pay the toll and any processing fee due or contest the toll within 30 days after
38 the date the notice of unpaid toll is served or mailed, the owner shall have waived the
39 right to contest the toll and may be issued a toll evasion violation citation subject to a
40 civil penalty not to exceed one hundred dollars (\$100.00) pursuant to G.S. 20-405. The
41 Authority shall establish procedures for the collection of these penalties and may
42 enforce the penalties by civil action in the nature of debt.

43 (d) The owner of a vehicle shall be responsible for a toll unless the owner can
44 furnish evidence that the vehicle was, at the time of the violation, in the care, custody,

1 or control of another person. The owner of the vehicle shall not be responsible for a toll
2 if the owner of the vehicle, within 30 days after the date of personal service or mailing
3 of the notice of unpaid toll, furnishes the Authority or processing agent either of the
4 following:

5 (1) A sworn affidavit stating the name and address of the person or
6 company who had the care, custody, and control of the vehicle. If the
7 vehicle involved was, at the time, a long-term lease or rental, as
8 defined in G.S. 105-187.1, the affidavit must be supported with
9 evidence that supports the affidavit that may include a copy of the
10 written lease or rental agreement.

11 (2) A sworn affidavit stating that the vehicle involved was, at the time,
12 stolen. The affidavit must be supported with evidence that supports the
13 affidavit, including insurance or police report information.

14 (3) A sworn affidavit stating that the vehicle involved, at the time, had
15 been sold or transferred by the registered owner, served to another
16 person prior to the date of the alleged violation. The affidavit must be
17 supported with evidence that supports the affidavit that may include a
18 copy of the certificate of title or insurance information.

19 (e) A toll evasion violation shall be deemed a noncriminal violation for which no
20 points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the
21 vehicle nor insurance points as authorized by G.S. 58-36-65.

22 **"§ 20-402. Processing fee.**

23 (a) Outsourcing. – The Authority may contract for the processing of notices of
24 unpaid tolls that remain outstanding 72 hours or more after a vehicle operates upon a
25 toll facility without payment of the toll.

26 (b) Fee. – For any unpaid toll that remains outstanding 72 hours or more after a
27 vehicle operates upon a toll facility without payment of the toll, the Authority may
28 establish a processing fee to cover only the actual expenses related to collecting unpaid
29 tolls, not to exceed ten (\$10.00) dollars.

30 (c) Use. – A processing fee is a receipt of the Authority and shall be applied only
31 to the actual costs of collecting unpaid tolls. The proceeds must be credited to a special
32 account within the Authority and shall be expended only as provided in this subsection.
33 The proceeds of the fee shall not be used for any purpose that is not directly and
34 primarily related to the collection of unpaid tolls. The Authority may use the proceeds
35 for the purposes listed in this subsection. Any remaining fee proceeds shall remain in
36 the special account until spent for the costs of collection of unpaid tolls. The Authority
37 and the Office of State Budget and Management shall account for all expenditures from
38 the fund using accounting procedures that clearly distinguish cost allocable to collecting
39 unpaid tolls from costs allocable to other purposes and demonstrate that none of the fee
40 proceeds are used for any purpose other than collecting unpaid tolls.

41 (d) Application of Fees. – The Authority may apply the fee proceeds for the
42 following purposes:

43 (1) To pay contractors for collecting unpaid tolls pursuant to subsection
44 (a) of this section.

- (2) To pay for vehicle registration identifying services, not to exceed five hundred thousand dollars (\$500,000) per year.
- (3) To pay for personal service, postage or other delivery charges for correspondence directly and primarily relating to collecting unpaid tolls, not to exceed five hundred thousand dollars (\$500,000) per year.
- (4) To pay for toll collection operating expenses for the Authority's Customer Service Center, including employees, equipment, hardware, and software directly and primarily related to collecting unpaid tolls.

"§ 20-403. Administrative adjudication.

The Authority shall institute a nonjudicial administrative hearing procedures to review citations or penalties issued or assessed under this Article, said hearings which may be conducted by either the Authority or an Administrative Hearing Officer appointed by the Authority. The provisions of Chapter 150B of the General Statutes shall not apply to the Authority or its hearing officers.

"§ 20-404. Judicial review.

(a) The contestant may seek judicial review of the Authority or processing agency's final decision by filing a written notice of appeal to the district court, in the county where the alleged violation took place, within 20 days after the mailing of the final decision by the Authority or processing agent. On appeal the standard of review shall be de novo. The contents of the Authority or processing agent's file in the case on appeal shall be received in evidence if the contents can be shown not to create an unfair prejudice toward the alleged violator. A copy of a toll evasion citation shall be prima facie evidence of the facts stated therein. A copy of the written notice of appeal shall be served upon the Authority or the processing agent in a manner consistent with Rule 4 of the North Carolina Rules of Civil Procedure.

(b) If no written notice of appeal of the Authority or Administrative Hearing Officer decision is filed within the period set forth in subsection (a) of this section, the decision shall be deemed final.

(c) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the Authority or processing agent may, promptly after the decision becomes final, proceed to collect the penalty under G.S. 20-405.

(d) Vehicle registration shall be suspended pursuant to G.S. 20-54 for nonpayment of tolls, fees, or penalties assessed pursuant to this Article if the tolls, fees, or penalties remain unpaid 6 months beyond the date a decision is deemed final pursuant to subsection (b) and (c) of this section.

"§ 20-405. Toll evasion penalties.

(a) A schedule of toll evasion penalties for toll evasion violations shall be established by the Authority, but shall not exceed the amount of the unpaid toll plus one hundred dollars (\$100.00) per violation.

(b) Toll evasion penalties under this Article shall be collected as civil penalties.

(c) If the toll evasion penalty is received by the person authorized to receive the deposit of the toll evasion penalty and there is no contest as to that toll evasion violation, the proceedings under this Article shall terminate.

(d) The amount of the unpaid toll shall be retained by or remitted to the Authority. The clear proceeds from the citations issued pursuant to this Article shall be paid to the Civil Penalty and Forfeiture Fund. For the purposes of determining the clear proceeds derived from the citations, the following expenses, not to exceed ten percent (10%) of the civil penalty assessed pursuant to subsection (b) of this section, are authorized to be deducted from each civil penalty assessed pursuant to the provisions of subsection (b) of this section:

(1) The cost of materials and postage directly related to the printing and mailing of a citation sent to the owner and, if necessary, the driver of the vehicle.

(2) The cost of computer services directly related to the production and mailing of a citation described in subdivision (1) of this subsection.

(e) The Authority may assess a collection assistance fee against the owner and, if necessary, driver of the vehicle under the following conditions:

(1) The civil penalty has not been paid within 30 days after a toll evasion citation is issued including a statement that a collection assistance fee will be assessed if the penalty is not paid within said time period. A collection assistance fee shall not exceed twenty percent (20%) of the civil penalty assessed pursuant to this section.

(2) Collection assistance fees shall be placed in a separate fund that may be used only for the purpose of paying for the costs of collection expended to collect civil penalties that remain unpaid 30 days pursuant to subdivision (1) of this subsection.

Amounts collected must be credited first to the payment of the civil penalty and then to the collection assistance fee.

"§ 20-406. Use of information.

No information obtained pursuant to this Article shall be used for any purpose other than to facilitate the enforcement of toll collections pursuant to this Article, unless required for law enforcement investigative purposes or otherwise ordered by a court of competent jurisdiction.

"§ 20-407. Authority to enter into cooperative and reciprocal agreements.

The Authority is authorized to enter into cooperative and reciprocal agreements with other states or their agents to receive and share vehicle identification information, including registered vehicle owner names and addresses and such other information necessary to facilitate the enforcement of toll collections with respect to nonresident vehicles."

SECTION 2. G.S. 20-54 is amended by adding a new subdivision to read:

"(10) The North Carolina Turnpike Authority has provided notice to the owner of a registered vehicle that is subject to unpaid tolls, fees, or penalties assessed in accordance with Article 18 of this Chapter."

SECTION 3. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or

1 who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any
2 part or portion of a registration plate or the figures or letters thereon, or who shall place
3 or deposit or cause to be placed or deposited any oil, grease, or other substance upon
4 such registration plates for the purpose of making dust adhere thereto, or who shall
5 deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall
6 display a number plate in other than a horizontal upright position, shall be guilty of a
7 Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or
8 cause to be covered any part or portion of a registration plate or the figures or letters
9 thereon by any device designed or intended to prevent or interfere with the taking of a
10 clear photograph of a registration plate by a traffic control or toll collection system
11 using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator
12 of a motor vehicle who shall otherwise intentionally cover any number or registration
13 renewal sticker on a registration plate with any material that makes the number or
14 registration renewal sticker illegible commits an infraction and shall be fined under
15 G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that
16 are not designed or intended to prevent or interfere with the taking of a clear photograph
17 of a registration plate by a traffic control or toll collection system using cameras.

18 **SECTION 4.** G.S. 136-89.183(a)(2) reads as rewritten:

19 "(2) To study, plan, develop, and undertake preliminary design work on up
20 to nine Turnpike Projects. At the conclusion of these activities, the
21 Turnpike Authority is authorized to design, establish, purchase,
22 construct, operate, and maintain the following projects:

- 23 a. Triangle Parkway-Parkway Expressway, including segments
24 also known as NC 540, Triangle Parkway and Western Wake
25 Freeway in Wake and Durham Counties.
- 26 b. Gaston East-West ~~Connector~~-Connector, also known as the
27 Garden Parkway.
- 28 c. Monroe ~~Connector~~-Connector/Bypass.
- 29 d. Cape Fear Skyway.
- 30 e. A bridge of more than two miles in length going from the
31 mainland to a peninsula bordering the State of
32 Virginia-Virginia, pursuant to G.S. 136.89.183A.
- 33 f. I-540 in Wake and Durham Counties.

34 Any other project proposed by the Authority in addition to the projects
35 listed in this subdivision must be approved by the General Assembly
36 prior to construction.

37 A Turnpike Project selected for construction by the Turnpike
38 Authority shall be included in any applicable locally adopted
39 comprehensive transportation plans and shall be shown in the current
40 State Transportation Improvement Plan prior to the letting of a
41 contract for the Turnpike Project."

42 **SECTION 5.** G.S. 136-89.183 by adding a new subsection to read:

43 "(c) Notwithstanding any other provisions of law to the contrary, all moneys
44 received by the Authority shall be deemed to be trust funds to be held and applied solely

1 as provided in this Article. The resolution authorizing any obligations or trust agreement
2 securing the same may provide that any of such moneys may be temporarily invested
3 pending the disbursement thereof and shall provide that any officer with whom, or any
4 bank or trust company with which, such moneys shall be deposited shall act as trustee of
5 such moneys and shall hold and apply the same for the purposes hereof, subject to such
6 regulations as such resolution or trust agreement may provide. Subject to any such
7 regulations in a resolution or trust agreement, any moneys received by the Authority and
8 available to the Authority may be invested by the Authority in any investments
9 permitted by G.S. 159-30, except that for purposes of G.S. 159-30(b) the Authority may
10 deposit moneys at interest in banks or trust companies outside as well as in this State, as
11 long as moneys on deposit outside this State are collateralized to the same extent and
12 manner as if deposited in this State."

13 **SECTION 6.** G.S. 136-89.194 reads as rewritten:

14 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

15 (a) Motor Vehicle Laws. – The Turnpike System shall be considered a
16 "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in
17 G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State
18 Highway Patrol and the Division of Motor Vehicles, shall have the same powers and
19 duties on the Turnpike System as on any other highway or public vehicular area.

20 (b) Contracting. – For the purposes of implementing this Article, the Authority
21 shall solicit competitive proposals for the construction of Turnpike Projects in
22 accordance with the provisions of Article 2 of this Chapter. Contracts for professional
23 engineering services and other kinds of professional or specialized services necessary in
24 connection with construction of Turnpike Projects shall be solicited in accordance with
25 procedures utilized by the Department of Transportation.

26 (c) Alternative Contracting Methods. – Notwithstanding the provisions of
27 subsection (b) of this section, the Authority may authorize the use of alternative
28 contracting methods if:

- 29 (1) The authorization applies to an individual project;
- 30 (2) The Authority has concluded, and documented in writing, that the
31 alternative contracting method is necessary because the project cannot
32 be completed utilizing the procedures of Article 2 of this Chapter
33 within the necessary time frame or available funding or for other
34 reasons the Authority deems in the public interest;
- 35 (3) The Authority has provided, to the extent possible, for the solicitation
36 of competitive proposals prior to awarding a contract; and
- 37 (4) The approved alternative contracting method provides for reasonable
38 compliance with the disadvantaged business participation goals of
39 G.S. 136-28.4.

40 (d) Entry for Surveys. – The Turnpike Authority and its employees and
41 contractors shall have the same right of entry for surveys, borings, soundings, or
42 examinations as granted the Department of Transportation in G.S. 136-120.

43 (e) Documents and Records. – The diaries kept in connection with construction
44 or repair contracts entered into by the Turnpike Authority and any analysis generated by

1 any bid analysis and management system, including work papers, documents, and the
2 output of automated systems associated with the analyses of bids of the Turnpike
3 Authority, shall have the same public record status as the records of the Department of
4 Transportation in G.S. 136-28.5.

5 (f) Adjustment and Resolution of Turnpike Construction Claim. – The provisions
6 of G.S. 136-29 shall apply to the Turnpike Authority except that references in
7 G.S. 136-29 to Turnpike Authority and the 'State Highway Administrator' shall be to the
8 'Turnpike Authority' and the 'Chief Engineer', respectively. References in G.S. 136-29
9 to a 'State Highway' shall be to a 'Turnpike facility.'

10 (g) Article 3 of Chapter 143 of the General Statutes shall not apply to the
11 Turnpike Authority, but as feasible, the Authority may use the services of the
12 Department of Administration in procuring goods and services for the Authority not
13 specific to establishing and operating toll revenue systems.

14 (g) Article 3D of Chapter 147 of the General Statutes shall not apply to the
15 Turnpike Authority, but as feasible, the Authority may use the services of State
16 Information Technology in procuring equipment, goods, and services not specific to
17 establishing and operating toll revenue systems.

18 (h) Chapter 150B of the General Statutes shall not apply to the Turnpike
19 Authority, except as provided in G.S. 136-89.194(f)."

20 **SECTION 7.** G.S. 47-30(l) reads as rewritten:

21 "(l) The provisions of this section shall not apply to the registration of highway
22 right-of-way plans provided for in G.S. 136-19.4 G.S. 136-19.4, the Turnpike Authority
23 right-of-way plans provided for in G.S. 136-89.184A, nor to registration of roadway
24 corridor official maps provided in Article 2E of Chapter 136."

25 **SECTION 8.** Chapter 136 of the General Statutes is amended by adding a
26 new section to read:

27 **"§ 136-89.184A. Registration of right-of-way plans.**

28 (a) A copy of the cover sheet and plan and profile sheets of the final right-of-way
29 plans for all Turnpike Authority projects, on those projects for which plans are
30 prepared, under which right-of-way or other interest in real property is acquired or
31 access is controlled shall be certified by the Turnpike Authority to the register of deeds
32 of the county or counties within which the project is located. The Authority shall certify
33 said plan sheets to the register of deeds within two weeks from their formal approval by
34 the Board of Directors.

35 (b) The copy of the plans certified to the register of deeds shall consist of a
36 Xerox, photographic, or other permanent copy, except for plans electronically
37 transmitted pursuant to subsection (c) of this section and shall measure approximately
38 17 inches by 11 inches including no less than one and one-half inches binding space on
39 the left-hand side.

40 (c) With the approval of the county in which the right-of-way plans are to be
41 filed, the Authority may transmit the plans electronically.

42 (d) Notwithstanding any other provision of law, upon receipt of the original
43 certified copy of the right-of-way plans, the register of deeds shall record the
44 right-of-way plans and place the same in a book maintained for that purpose, and the

1 register of deeds shall maintain a cross-index to the right-of-way plans by number of
2 roads affected, if any, and by identification number. No probate before the clerk of the
3 superior court shall be required.

4 (e) If after the approval of said final right-of-way plans, the Board of Directors
5 shall by resolution alter or amend said right-of-way or control of access, the Turnpike
6 Authority, within two weeks from the adoption by the Board of Directors of the
7 alteration or amendment, shall certify to the register of deeds in the county or counties
8 within which the project is located a copy of the amended plan and profile sheets
9 approved by the Board of Directors and the register of deeds shall remove the original
10 plan sheets and record the amended plan sheets in lieu thereof.

11 (f) The register of deeds in each county shall collect a fee from the Turnpike
12 Authority for recording right-of-way plans and profile sheets in the amount set out in
13 G.S. 161-10."

14 **SECTION 9.** Chapter 136 of the General Statutes is amended by adding a
15 new section to read:

16 **"§ 136-89.184B. Project cost estimates.**

17 All cost estimates prepared for the purpose of comparing bids shall be confidential
18 and shall not be disclosed until after the opening of bids for a project."

19 **SECTION 10.** Sections 1, 2 and 3 of this act become effective December 1,
20 2008. The remainder of this act is effective when it becomes law.



SENATE BILL 1697: Toll Road Enforcement/Authority Changes

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 3, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1697-CSSU-70[v.2]		Committee Counsel

SUMMARY: *Senate Bill 1697 would add provisions to State law to enforce collection of tolls at toll facilities operated by the North Carolina Turnpike Authority and modify other statutory provisions applicable to the Turnpike Authority. The bill is a request of the North Carolina Turnpike Authority and a recommendation of the Joint Legislative Transportation Oversight Committee.*

BILL ANALYSIS: The following is a summary of each section of the bill, provided by the North Carolina Turnpike Authority:

Section 1: Establishes Toll Enforcement Authority

- Requires the payment of tolls on toll facilities.
- Establishes parameters for issuing notice of unpaid tolls.
- Provides that failure to satisfy or contest unpaid tolls within 30 days of receiving notice constitutes a toll evasion violation.
- Provides toll evasion violation is subject to a civil penalty not to exceed \$100.00, and violation is deemed a noncriminal violation for which no insurance points are assigned.
- Authorizes the Authority to establish a processing fee not to exceed \$10.00 for the purposes of collecting unpaid tolls; fees may be expended only for purposes directly and primarily related to the collection of unpaid tolls; expenditures subject to State Budget oversight.
- Authorizes the Authority to institute nonjudicial administrative hearings procedures to review toll violations, fees and penalties.
- Provides procedures for judicial review of the Authority's final decisions.
- Provides that vehicle registration may be suspended if tolls, fees and penalties remain unpaid 6 months beyond the date a final decision is rendered.
- Provides that clear proceeds of civil penalties will be paid to the Civil Penalty and Forfeiture Fund.
- Provides that information obtained for toll enforcement purposes will be used only for those purposes, unless required for law-enforcement purposes or otherwise ordered by a court.
- Authorizes the Authority to enter into cooperative and reciprocal agreements with other states or their agents to receive and share vehicle identification information necessary to enforce tolls with respect to non-resident vehicles.

Section 2: Amends current statutory provision to authorize the Authority to give notice of unpaid tolls, fees and penalties to DMV for the purpose of suspending vehicle registrations.

Section 3: Amends current statutory provision to make it an infraction to alter, disguise or conceal any part or portion of vehicle registration plates to prevent or interfere with taking a clear image by a toll collection system using cameras.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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SENATE BILL 1697*

PROPOSED COMMITTEE SUBSTITUTE S1697-CSSU-70 [v.2]

6/2/2008 10:59:20 PM

Short Title: Toll Road Enforcement/Authority Changes.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Toll Enforcement.

"§ 20-400. Definitions.

Unless the context requires otherwise, the following definitions apply to this Article to the defined words and phrases and their cognates:

- (1) Authority. – The North Carolina Turnpike Authority acting directly or through its duly authorized officers or agents to collect tolls or fees for the use of any road, bridge, or tunnel designated as a toll facility.
- (2) Processing agent. – A person or a public or private agency authorized by the Authority, responsible for the processing of the notices of unpaid tolls pursuant to this Article.
- (3) Toll enforcement officer. – A person authorized by the Authority to review and issue toll evasion citations and penalties in accordance with this Article and the operating procedures of the Authority.
- (4) Toll evasion violation. – The use of a toll facility without payment of tolls as set and established by the Authority.
- (5) Toll facility. – Any road, bridge, or tunnel for which tolls or fees may be charged for the use thereof pursuant to Article 6H of Chapter 136 of the General Statutes.

1 **"§ 20-401. Payment of toll on toll facility required.**

2 (a) A person shall not use a toll facility without payment of tolls as established in
3 accordance with the operating procedures of the Authority.

4 (b) If a vehicle is determined by automated or electronic imaging devices, visual
5 observation, or otherwise to have operated on a toll facility without payment of a toll,
6 the owner of the vehicle may be issued a notice of unpaid toll by the Authority, or a
7 processing agent, within 72 hours of the toll facility use.

8 (1) The notice shall specifically set forth the following:

- 9 a. The approximate date, time, and segment or segments of the toll
10 facility or facilities used.
11 b. The image of the vehicle registration plate when an electronic
12 image is available.
13 c. If practicable, the registration expiration date and the make of
14 the vehicle.
15 d. The amount of the toll and any processing fee due.
16 e. The date payment is due and information regarding how
17 payment may be made.
18 f. A clear and concise explanation of the procedures for contesting
19 the toll and appealing an adverse decision.

20 (2) The notice shall be processed by officials or agents of the Authority, or
21 a processing agent, and shall be forwarded by personal service or first
22 class mail to the address given on the motor vehicle registration.

23 (3) If accurate information concerning the identity and address of the
24 registered owner of the vehicle is not available to the processing agent
25 within 30 days of the violation, the Authority or processing agent shall
26 have an additional 45 calendar days to obtain such information and
27 forward the notice of unpaid toll.

28 (4) Where the registered owner is a repeat violator, the processing agent
29 may forward the notice of unpaid toll within 90 calendar days of the
30 violation. 'Repeat violator' means any registered owner that has had
31 more than five violations issued pursuant to this section in any 30-day
32 period within the preceding 12-month period. Notwithstanding this
33 section, a law enforcement officer may issue a citation as appropriate
34 pursuant to this Chapter to a repeat violator when the officer observes
35 such individual immediately operating a vehicle, identified in five or
36 more violations, on a toll facility.

37 (c) If the owner fails to comply with the direction on the notice of unpaid toll by
38 failing to pay the toll and any processing fee due or contest the toll within 30 days after
39 the date the notice of unpaid toll is served or mailed, the owner shall have waived the
40 right to contest the toll and may be issued a toll evasion violation citation subject to a
41 civil penalty not to exceed one hundred dollars (\$100.00) pursuant to G.S. 20-405. The
42 Authority shall establish procedures for the collection of these penalties and may
43 enforce the penalties by civil action in the nature of debt.

(d) The owner of a vehicle shall be responsible for a toll 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 a toll if the owner of the vehicle, within 30 days after the date of personal service or mailing of the notice of unpaid toll, furnishes the Authority or processing agent any of the following:

(1) A sworn affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle. If the vehicle involved was, at the time, a long-term lease or rental, as defined in G.S. 105-187.1, the affidavit must be supported with evidence that may include a copy of the written lease or rental agreement.

(2) A sworn affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence, including insurance or police report information.

(3) A sworn affidavit stating that the vehicle involved, at the time, had been sold or transferred by the registered owner to another person prior to the date of the alleged violation. The affidavit must be supported with evidence that may include a copy of the certificate of title or insurance information.

(e) A toll evasion violation shall be deemed a noncriminal violation for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

"§ 20-402. Processing fee.

(a) Outsourcing. – The Authority may contract for the processing of notices of unpaid tolls that remain outstanding 72 hours or more after a vehicle operates upon a toll facility without payment of the toll.

(b) Fee. – For any unpaid toll that remains outstanding 72 hours or more after a vehicle operates upon a toll facility without payment of the toll, the Authority may establish a processing fee to cover only the actual expenses related to collecting unpaid tolls, not to exceed ten (\$10.00) dollars.

(c) Use. – A processing fee is a receipt of the Authority and shall be applied only to the actual costs of collecting unpaid tolls. The proceeds must be credited to a special account within the Authority and shall be expended only as provided in this subsection. The proceeds of the fee shall not be used for any purpose that is not directly and primarily related to the collection of unpaid tolls. The Authority may use the proceeds for the purposes listed in this subsection. Any remaining fee proceeds shall remain in the special account until spent for the costs of collection of unpaid tolls. The Authority and the Office of State Budget and Management shall account for all expenditures from the fund using accounting procedures that clearly distinguish cost allocable to collecting unpaid tolls from costs allocable to other purposes and demonstrate that none of the fee proceeds are used for any purpose other than collecting unpaid tolls.

(d) Application of Fees. – The Authority may apply the fee proceeds for the following purposes:

- (1) To pay contractors for collecting unpaid tolls pursuant to subsection (a) of this section.
- (2) To pay for vehicle registration identifying services, not to exceed five hundred thousand dollars (\$500,000) per year.
- (3) To pay for personal service, postage or other delivery charges for correspondence directly and primarily relating to collecting unpaid tolls, not to exceed five hundred thousand dollars (\$500,000) per year.
- (4) To pay for toll collection operating expenses for the Authority's Customer Service Center, including employees, equipment, hardware, and software directly and primarily related to collecting unpaid tolls.

"§ 20-403. Administrative adjudication.

The Authority shall institute a nonjudicial administrative hearing procedure to review citations or penalties issued or assessed under this Article. Hearings may be conducted by either the Authority or an Administrative Hearing Officer appointed by the Authority. The provisions of Chapter 150B of the General Statutes shall not apply to the Authority or its hearing officers.

"§ 20-404. Judicial review.

(a) The contestant may seek judicial review of the Authority or processing agency's final decision by filing a written notice of appeal to the district court, in the county where the alleged violation took place, within 20 days after the mailing of the final decision by the Authority or processing agent. On appeal the standard of review shall be de novo. The contents of the Authority or processing agent's file in the case on appeal shall be received in evidence if the contents can be shown not to create an unfair prejudice toward the alleged violator. A copy of a toll evasion citation shall be prima facie evidence of the facts stated therein. A copy of the written notice of appeal shall be served upon the Authority or the processing agent in a manner consistent with Rule 4 of the North Carolina Rules of Civil Procedure.

(b) If no written notice of appeal of the Authority or Administrative Hearing Officer decision is filed within the period set forth in subsection (a) of this section, the decision shall be deemed final.

(c) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the Authority or processing agent may, promptly after the decision becomes final, proceed to collect the penalty under G.S. 20-405.

(d) Vehicle registration shall be suspended pursuant to G.S. 20-54 for nonpayment of tolls, fees, or penalties assessed pursuant to this Article if the tolls, fees, or penalties remain unpaid 6 months beyond the date a decision is deemed final pursuant to subsection (b) and (c) of this section.

"§ 20-405. Toll evasion penalties.

(a) A schedule of toll evasion penalties for toll evasion violations shall be established by the Authority, but shall not exceed the amount of the unpaid toll plus one hundred dollars (\$100.00) per violation.

(b) Toll evasion penalties under this Article shall be collected as civil penalties.

1 (c) If the toll evasion penalty is received by the person authorized to receive the
2 deposit of the toll evasion penalty and there is no contest as to that toll evasion
3 violation, the proceedings under this Article shall terminate.

4 (d) The amount of the unpaid toll shall be retained by or remitted to the
5 Authority. The clear proceeds from the citations issued pursuant to this Article shall be
6 paid to the Civil Penalty and Forfeiture Fund. For the purposes of determining the clear
7 proceeds derived from the citations, the following expenses, not to exceed ten percent
8 (10%) of the civil penalty assessed pursuant to subsection (b) of this section, are
9 authorized to be deducted from each civil penalty assessed pursuant to the provisions of
10 subsection (b) of this section:

11 (1) The cost of materials and postage directly related to the printing and
12 mailing of a citation sent to the owner and, if necessary, the driver of
13 the vehicle.

14 (2) The cost of computer services directly related to the production and
15 mailing of a citation described in subdivision (1) of this subsection.

16 (e) The Authority may assess a collection assistance fee against the owner and, if
17 necessary, driver of the vehicle under the following conditions:

18 (1) The civil penalty has not been paid within 30 days after a toll evasion
19 citation is issued including a statement that a collection assistance fee
20 will be assessed if the penalty is not paid within said time period. A
21 collection assistance fee shall not exceed twenty percent (20%) of the
22 civil penalty assessed pursuant to this section.

23 (2) Collection assistance fees shall be placed in a separate fund that may
24 be used only for the purpose of paying for the costs of collection
25 expended to collect civil penalties that remain unpaid 30 days pursuant
26 to subdivision (1) of this subsection.

27 Amounts collected must be credited first to the payment of the civil penalty and then
28 to the collection assistance fee.

29 **"§ 20-406. Use of information.**

30 No information obtained pursuant to this Article shall be used for any purpose other
31 than to facilitate the enforcement of toll collections pursuant to this Article, unless
32 required for law enforcement investigative purposes or otherwise ordered by a court of
33 competent jurisdiction.

34 **"§ 20-407. Authority to enter into cooperative and reciprocal agreements.**

35 The Authority is authorized to enter into cooperative and reciprocal agreements with
36 other states or their agents to receive and share vehicle identification information,
37 including registered vehicle owner names and addresses and such other information
38 necessary to facilitate the enforcement of toll collections with respect to nonresident
39 vehicles."

40 **SECTION 2.** G.S. 20-54 is amended by adding a new subdivision to read:

41 "(10) The North Carolina Turnpike Authority has provided notice to the
42 owner of a registered vehicle that is subject to unpaid tolls, fees, or
43 penalties assessed in accordance with Article 18 of this Chapter."

44 **SECTION 3.** G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or cause to be covered any part or portion of a registration plate or the figures or letters thereon by any device designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that are not designed or intended to prevent or interfere with the taking of a clear photograph of a registration plate by a traffic control or toll collection system using cameras.

SECTION 4. G.S. 136-89.183(a)(2) reads as rewritten:

"(2) To study, plan, develop, and undertake preliminary design work on up to nine Turnpike Projects. At the conclusion of these activities, the Turnpike Authority is authorized to design, establish, purchase, construct, operate, and maintain the following projects:

- a. Triangle Parkway-Expressway, including segments also known as NC 540, Triangle Parkway and Western Wake Freeway in Wake and Durham Counties.
- b. Gaston East-West Connector-Connector, also known as the Garden Parkway.
- c. Monroe Connector-Connector/Bypass.
- d. Cape Fear Skyway.
- e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia-Virginia, pursuant to G.S. 136-89.183A.
- f. ~~I-540 in Wake and Durham Counties.~~

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project."

1 **SECTION 5.** G.S. 136-89.183 by adding a new subsection to read:

2 "**(c)** Notwithstanding any other provisions of law to the contrary, all moneys
3 received by the Authority shall be deemed to be trust funds to be held and applied solely
4 as provided in this Article. The resolution authorizing any obligations or trust agreement
5 securing the same may provide that any of such moneys may be temporarily invested
6 pending the disbursement thereof and shall provide that any officer with whom, or any
7 bank or trust company with which, such moneys shall be deposited shall act as trustee of
8 such moneys and shall hold and apply the same for the purposes hereof, subject to such
9 regulations as such resolution or trust agreement may provide. Subject to any such
10 regulations in a resolution or trust agreement, any moneys received by the Authority and
11 available to the Authority may be invested by the Authority in any investments
12 permitted by G.S. 159-30, except that for purposes of G.S. 159-30(b) the Authority may
13 deposit moneys at interest in banks or trust companies outside as well as in this State, as
14 long as moneys on deposit outside this State are collateralized to the same extent and
15 manner as if deposited in this State."

16 **SECTION 6.** G.S. 136-89.194 reads as rewritten:

17 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

18 (a) Motor Vehicle Laws. – The Turnpike System shall be considered a
19 "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in
20 G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State
21 Highway Patrol and the Division of Motor Vehicles, shall have the same powers and
22 duties on the Turnpike System as on any other highway or public vehicular area.

23 (b) Contracting. – For the purposes of implementing this Article, the Authority
24 shall solicit competitive proposals for the construction of Turnpike Projects in
25 accordance with the provisions of Article 2 of this Chapter. Contracts for professional
26 engineering services and other kinds of professional or specialized services necessary in
27 connection with construction of Turnpike Projects shall be solicited in accordance with
28 procedures utilized by the Department of Transportation.

29 (c) Alternative Contracting Methods. – Notwithstanding the provisions of
30 subsection (b) of this section, the Authority may authorize the use of alternative
31 contracting methods if:

- 32 (1) The authorization applies to an individual project;
- 33 (2) The Authority has concluded, and documented in writing, that the
34 alternative contracting method is necessary because the project cannot
35 be completed utilizing the procedures of Article 2 of this Chapter
36 within the necessary time frame or available funding or for other
37 reasons the Authority deems in the public interest;
- 38 (3) The Authority has provided, to the extent possible, for the solicitation
39 of competitive proposals prior to awarding a contract; and
- 40 (4) The approved alternative contracting method provides for reasonable
41 compliance with the disadvantaged business participation goals of
42 G.S. 136-28.4.

(d) Entry for Surveys. – The Turnpike Authority and its employees and contractors shall have the same right of entry for surveys, borings, soundings, or examinations as granted the Department of Transportation in G.S. 136-120.

(e) Documents and Records. – The diaries kept in connection with construction or repair contracts entered into by the Turnpike Authority and any analysis generated by any bid analysis and management system, including work papers, documents, and the output of automated systems associated with the analyses of bids of the Turnpike Authority, shall have the same public record status as the records of the Department of Transportation in G.S. 136-28.5.

(f) Adjustment and Resolution of Turnpike Construction Claim. – The provisions of G.S. 136-29 shall apply to the Turnpike Authority except that references in G.S. 136-29 to the 'Department of Transportation' and the 'State Highway Administrator' shall be to the 'Turnpike Authority' and the 'Chief Engineer', respectively. References in G.S. 136-29 to a 'State highway' shall be to a 'Turnpike facility.'

(g) Article 3 of Chapter 143 of the General Statutes shall not apply to the Turnpike Authority, but as feasible, the Authority may use the services of the Department of Administration in procuring goods and services for the Authority not specific to establishing and operating toll revenue systems. All contract information shall be made a matter of public record in the same manner as set forth in G.S. 147-33.95(a).

(h) Article 3D of Chapter 147 of the General Statutes shall not apply to the Turnpike Authority, but as feasible, the Authority may use the services of State Information Technology in procuring equipment, goods, and services not specific to establishing and operating toll revenue systems.

(i) Chapter 150B of the General Statutes shall not apply to the Turnpike Authority, except as provided in G.S. 136-89.194(f)."

SECTION 7. G.S. 47-30(l) reads as rewritten:

"(l) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in ~~G.S. 136-19.4~~ G.S. 136-19.4, the Turnpike Authority right-of-way plans provided for in G.S. 136-89.184A, nor to registration of roadway corridor official maps provided in Article 2E of Chapter 136."

SECTION 8. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-89.184A. Registration of right-of-way plans.

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Turnpike Authority projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Turnpike Authority to the register of deeds of the county or counties within which the project is located. The Authority shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Directors.

(b) The copy of the plans certified to the register of deeds shall consist of a Xerox, photographic, or other permanent copy, except for plans electronically

transmitted pursuant to subsection (c) of this section and shall measure approximately 17 inches by 11 inches including no less than one and one-half inches binding space on the left-hand side.

(c) With the approval of the county in which the right-of-way plans are to be filed, the Authority may transmit the plans electronically.

(d) Notwithstanding any other provision of law, upon receipt of the original certified copy of the right-of-way plans, the register of deeds shall record the right-of-way plans and place the same in a book maintained for that purpose, and the register of deeds shall maintain a cross-index to the right-of-way plans by number of roads affected, if any, and by identification number. No probate before the clerk of the superior court shall be required.

(e) If after the approval of said final right-of-way plans, the Board of Directors shall by resolution alter or amend said right-of-way or control of access, the Turnpike Authority, within two weeks from the adoption by the Board of Directors of the alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Directors and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(f) The register of deeds in each county shall collect a fee from the Turnpike Authority for recording right-of-way plans and profile sheets in the amount set out in G.S. 161-10."

SECTION 9. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-89.184B. Project cost estimates.

All cost estimates prepared for the purpose of comparing bids shall be confidential and shall not be disclosed until after the opening of bids for a project."

SECTION 10. G.S. 146-65 reads as rewritten:

"§ 146-65. Exemptions from Chapter.

None of the provisions of Chapter 146 shall apply to:

- (1) The acquisition of highway rights-of-way, borrow pits, or other interests or estates in land acquired for the same or similar purposes, or to the disposition thereof, by the Board of Transportation; or
- (2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143B-452 through G.S. 143B-467 or to the exercise of all or any of such authority and powers, powers; or
- (3) The acquisition of rights-of-way, borrow pits, or other interests or estates in land acquired for turnpike project purposes, or to the disposition thereof, by the North Carolina Turnpike Authority.

Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement."

1 **SECTION 11.** Sections 1, 2 and 3 of this act become effective December 1,
2 2008. The remainder of this act is effective when it becomes law.

Senate Bill 1697

Page 2

Section 4: Amends provision in Authority's enabling legislation to clarify approved project descriptions.

Section 5: Amends the Authority's enabling legislation to provide that funds held in trust may be invested in the same manner as allowed by municipalities, subject to trust agreement restrictions.

Section 6: Modifies the application of various statutes to the Authority

- Provides diaries kept by the Authority in connection with construction and repair contracts have same public records status as NCDOT records.
- Authorizes the Authority to adjust and resolve construction claims in the same manner as NCDOT.
- Exempts the Authority from State ITS and Purchasing regulations, primarily for the purpose of procuring goods and services specific to establishing and operating toll revenue systems. Facilitate and expedite unique toll technology needs.
- Exempts the Authority from administrative rules process.

Section 7: Authorizes the Authority to register its right-of-way plans with the appropriate Office of the Register of Deeds in same manner as NCDOT.

Section 8: Amends the Authority's enabling legislation to set forth parameters for registration of right-of-way plans.

Section 9: Amends the Authority's enabling legislation to provide cost estimates prepared by or on behalf of the Authority remain confidential until after the opening of bids for a project in the same manner as NCDOT.

Section 10: Authorizes the Authority to be exempt from a requirement to go before the Council of State for each right-of-way acquisition.

EFFECTIVE DATE: Sections 1-3 of the bill (toll enforcement provisions) would become effective December 1, 2008. The remainder of the bill would be effective when it becomes law.

S1697e1-SMSU-CSSU-70v2

S.B. **1698**

ID # 2313

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPRESS PERMITTING REVIEW PROGRAM FOR CONNECTIONS TO THE STATE HIGHWAY SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Senator(s)

[Signature]
Jenkins

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING
MAY 21 2008
AND REFERRED TO COMMITTEE
Commerce, Small

Bus + Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

1

SENATE BILL 1698*

Short Title: Express Permitting Review Program.

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPRESS PERMITTING REVIEW PROGRAM FOR CONNECTIONS TO THE STATE HIGHWAY SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-93.1. Express Review Program.

(a) The Department may develop a fee supported express review program in each highway division to provide express permit and certification reviews in order for an applicant to make a connection to the State highway system for a driveway, street, signal, drainage, or any other encroachment. The Department of Transportation may use contracted engineering firms supporting each highway division to provide express permit reviews, comments, and recommendations for issuing such express permits. Existing staff and resources allocated to a division may be used for an express permit review program, but no new staff shall be hired for the purposes of implementing an express permit review program. Highway division participation in the express review program is voluntary. Any highway division that implements an express permit review program shall ensure it is supported by the fees established pursuant to subsection (b) of this section. The express review program may be applied to any or all of the permits, approvals, or certifications provided in this subsection and shall be processed within 30 days of receipt of a complete permit application by the Department.

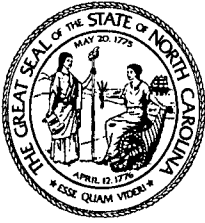
(b) The Department may determine the fees for an express application review under the express review program. The maximum permit application fee to be charged under this section for an express review of a project application requiring all of the permits under subsection (a) of this section shall not exceed four thousand dollars (\$4,000). The Department shall review and determine completeness of an application within 3 business days of receipt. If an express permit is not issued or denied within 30 days of

1 receipt of the complete permit application, the entire cost of the express permit will be
2 returned to the applicant. Notwithstanding Chapter 150B of the General Statutes, the
3 Department shall establish the procedure by which the amount of the fees under this
4 subsection are established and applied for an express review program permitted by this
5 section. All fee schedules shall be applicable to any divisions participating in an express
6 permit review program.

7 (c) No later than March 1 of each year, the Department shall report to the Fiscal
8 Research Division and the Joint Legislative Transportation Oversight Committee. The
9 report shall include the cost of administering the program in each division, the number
10 of express permits issued, the turnaround time for permits, the amount of fees collected
11 per division, and the method that divisions use to implement the program.

12 (d) All fees collected under this section shall be used to pay for the cost of
13 administering and implementing express review programs under this section. These
14 costs include the salaries of the program's staff and costs of contracted engineering
15 firms.

16 **SECTION 2.** This act becomes effective July 1, 2008.



SENATE BILL 1698: Express Permitting Review Program

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 3, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1698-CSRW-74[v.1]		Committee Counsel

SUMMARY: *Senate Bill 1698 would create an express permitting review program for connections to the State highway system, as recommended by the Joint Legislative Transportation Oversight Committee.*

[As introduced, this bill was identical to H2313, as introduced by Rep. Cole, which is currently in House Finance.]

BILL ANALYSIS: Senate Bill 1698 would require the Department of Transportation to create an express permitting review program for applications to make connections to the State highway system as follows:

- **DOT to Develop an Express Permitting Program** – DOT would be required to develop a fee supported express review program in each highway division, to provide express permit and certification reviews in order for an applicant to make a connection to the State highway system for a driveway, street, signal, drainage, or any other encroachment.
- **Voluntary Participation** – DOT highway division participation in the express permitting review program would be voluntary for those divisions that routinely review and issue permits within 45 days.
- **Time for Review** – DOT would be required to review and determine completeness of an application within 3 business days of receipt. If an express permit is not issued or denied within 30 days of receipt of the complete permit application, the entire cost of the express permit would have to be returned to the applicant. The permit application would then be forwarded to the Division Engineer who would be required to issue or deny the permit within 15 days.
- **Express Permitting Program Staff** – The bill would authorize DOT to use either contracted engineering firms, or existing staff, to support each highway division in providing the express permitting review program. DOT would not be authorized to hire new staff to implement the program.
- **Fees** – DOT would be authorized to determine the fees for an express application review, not to exceed \$4,000. The determination of the fee would not be subject to rulemaking procedures under Chapter 150B of the General Statutes.
- **Use of Fees** – All fees collected for express application reviews would be used to pay for the cost of administering and implementing the program.
- **Reports** – No later than March 1 of each year, DOT would be required to report to the Fiscal Research Division and the Joint Legislative Transportation Oversight Committee on the program.

Senate Bill 1698

Page 2

EFFECTIVE DATE: The act would become effective July 1, 2008.

Giles Perry, counsel to the House Transportation Committee, substantially contributed to this summary.

SI698e1-SMSU-CSRW-74v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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D

SENATE BILL 1698*

PROPOSED COMMITTEE SUBSTITUTE S1698-CSRW-74 [v.1]

5/29/2008 10:34:17 AM

Short Title: Express Permitting Review Program.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPRESS PERMITTING REVIEW PROGRAM FOR CONNECTIONS TO THE STATE HIGHWAY SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-93.1. Express Permit Review Program.

(a) Program created. – The Department shall develop a fee-supported express permit review program in each highway division. The program shall provide express permit and certification reviews, in order for an applicant to make a connection to the State highway system for a driveway, street, signal, drainage, or any other encroachment. The express permit review program may be applied to any or all of the permits, approvals, or certifications listed in this subsection.

(b) Highway division implementation. – Individual highway division participation in the express review program is voluntary if all special commercial permits are routinely reviewed and issued within 45 days in that division. Any highway division that implements an express permit review program shall ensure it is supported by the fees established pursuant to subsection (e) of this section.

(c) Time limits for review. – The Department shall review and determine completeness of an express permit application within 3 business days of receipt of an application. The Department shall review and process a complete express permit application within 30 days of receipt. If an express permit is not issued or denied within 30 days of receipt of the complete permit application, the entire cost of the express permit shall be returned to the applicant, and the permit application forwarded to the respective Division Engineer, who shall issue or deny the permit within 15 days of receipt.

1
2 (d) Staff for program. – The Department of Transportation may use contracted
3 engineering firms supporting each highway division to provide express permit reviews,
4 comments, and recommendations for issuing express permits. Existing Department staff
5 and resources allocated to a division may be used for an express permit review program,
6 but no new staff shall be hired for the purposes of implementing an express permit
7 review program.

8 (e) Fees. – The Department may determine the fees for an express application
9 review under the express review program. The maximum permit application fee to be
10 charged under this section for an express review of a project application requiring all of
11 the permits listed under subsection (a) of this section shall not exceed four thousand
12 dollars (\$4,000). Notwithstanding Chapter 150B of the General Statutes, the
13 Department shall establish the procedure by which the amount of the fees under this
14 subsection are established and applied for an express review program permitted by this
15 section. The fee schedule established by the Department shall be applicable to all
16 divisions participating in an express permit review program.

17 (f) Use of fees. – All fees collected under this section shall be used to fund the
18 cost of administering and implementing express permit review programs created under
19 this section. These costs include the salaries of the program's staff and costs of
20 contracted engineering firms.

21 (g) Reports. – No later than March 1 of each year, the Department shall report to
22 the Fiscal Research Division and the Joint Legislative Transportation Oversight
23 Committee on the express permitting review program. The report shall include the cost
24 of administering the program in each division, the number of express permits issued, the
25 turnaround time for permits, the amount of fees collected per division, and the method
26 that divisions use to implement the program."

27 **SECTION 2.** This act becomes effective July 1, 2008.

S.B. 1797
ID # 2309

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT LEGISLATIVE
TRANSPORTATION OVERSIGHT COMMITTEE STUDY OF TIRE RETREAD PROCESSES, AS
RECOMMENDED BY THE COMMITTEE

Introduced by Senator(s)

[Signature]
Jenkins

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING

MAY 21 2008

REFERRED TO COMMITTEE

ON *Commerce & Entrepreneurship*

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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1

SENATE BILL 1797*

Short Title: State Tire Contract.

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDY OF
TIRE RETREAD PROCESSES, AS RECOMMENDED BY THE COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Department of Administration, Division
of Purchase and Contract, is directed to make the following changes to its Request for
Proposal criteria for a statewide tire retread contract:

- (1) Require that the bids remain closed until a designated and advertised bid-opening day in which the bids are opened, announced, and recorded in public. The bids shall then be shown and made available to the public.
- (2) Do not require a specific type of retread method, such as a bead to bead or precure product.
- (3) Require that manufacturing company's original markings on tires be visible and not removed during the retread process.
- (4) Require that the cost of the tire retread include spot repairs, and that there no longer be a separate charge for a spot repair.
- (5) Include in the contract that all casings receive a state-of-the-art inspection with the use of shearography, ultrasound, electrostatic discharge, or other industry standard pressure testing methodology.
- (6) Include a threshold for the number of times a casing may be retreaded.
- (7) Include a threshold for the age of a casing that may be retreaded.
- (8) Include the number of nail hole repairs that are permissible for a casing to be retreaded.
- (9) Provide assurance that a particular fleet will receive its own casings back after retread completed.
- (10) Set minimum tread depths per category or application of the retread tire.

1 (11) Consider a multiaward contract structure that includes several vendors;
2 the Office of Purchase and Contract will take into account geographic
3 location and proximity of vendor to customer when creating a
4 multiaward contract.

5 (12) Allow State agencies to purchase up to ten percent (10%) of tires off
6 the State contract.

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



SENATE BILL 1797: State Tire Contract

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 3, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1797-CSSU-71[v.1]		Committee Counsel

SUMMARY: *Senate Bill 1797 would direct the North Carolina Division of Purchase and Contract to make specified changes to its Request for Proposal criteria for a statewide tire retread contract. The changes are recommendations of the Joint Legislative Transportation Oversight Committee following a study of tire retread processes.*

[As introduced, this bill was identical to H2309, as introduced by Rep. Cole, which is currently in House Ways and Means, if favorable, Transportation.]

BILL ANALYSIS: Senate Bill 1797 would direct the Division of Purchase and Contract to make the following changes to its Request for Proposal criteria for a statewide tire retread contract:

- Require bids remain closed until a designated bid-opening day, when they are opened publicly and made available.
- Do not require a specific retread method.
- Require manufacturer's original markings remain visible.
- No longer allow separate charges for spot repairs.
- Contract to specify that all casings receive a state-of-the-art inspection.
- Include threshold for number of times a casing may be retreaded.
- Include threshold for age of casing that may be retreaded.
- Include number of nail hole repairs permissible for casing to be retreaded.
- Require assurance that a fleet will receive its own casings back after retreading.
- Set minimum tread depths.
- Consider a multiaward contract structure with several vendors.
- Allow State agencies to purchase up to 10% of tires off the State contract.

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

S1797e1-SMSU-CSSU-71v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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D

SENATE BILL 1797*
PROPOSED COMMITTEE SUBSTITUTE S1797-CSSU-71 [v.1]

6/2/2008 6:48:41 PM

Short Title: State Tire Contract.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDY OF
TIRE RETREAD PROCESSES, AS RECOMMENDED BY THE COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina Department of Administration, Division
of Purchase and Contract, is directed to make the following changes to its Request for
Proposal criteria for a statewide tire retread contract:

- (1) Require that the bids remain closed until a designated and advertised
bid-opening day in which the bids are opened, announced, and
recorded in public. The bids shall then be shown and made available to
the public.
- (2) Do not require a specific type of retread method, such as a bead to
bead or precure product.
- (3) Require that manufacturing company's original markings on tires be
visible and not removed during the retread process.
- (4) Require that the cost of the tire retread include spot repairs, and that
there no longer be a separate charge for a spot repair.
- (5) Include in the contract that all casings receive a state-of-the-art
inspection with the use of shearography, ultrasound, electrostatic
discharge, high pressure testing, or other industry standard testing
methodology.
- (6) Include a threshold for the number of times a casing may be retreaded.
- (7) Include a threshold for the age of a casing that may be retreaded.
- (8) Include the number of nail hole repairs that are permissible for a
casing to be retreaded.
- (9) Provide assurance that a particular fleet will receive its own casings
back after retread completed.

- (10) Set minimum tread depths per category or application of the retread tire.
- (11) Consider a multiaward contract structure that includes several vendors; the Office of Purchase and Contract will take into account geographic location and proximity of vendor to customer when creating a multiaward contract.
- (12) Allow State agencies to purchase up to ten percent (10%) of tires off the State contract.

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

VISITOR REGISTRATION SHEET

Name of Committee

**SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP**

Date

Date *Tuesday.*
June 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Betsy Bailey

Professional Engineers of NC
RTA

Qing

RTA

Andy Munn

REF BIC

Bill O'Donnell

NC SBA

Jeremy Watson

Sen. Goss, Intern

Cameron Healey

Electricities of NC

VISITOR REGISTRATION SHEET

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FIRM OR AGENCY AND ADDRESS

Kathy Hawks	Proper Energy
Walt Harrell	TPG
Emily Wallbom	TPG
Steve McIntyre	The Policy Corp
Al MacFarland	F C Bailey
Jon Tegen	NMRS
David Hanson	Office of Commissioner of Banks
Dick Taylor	<u>NCATL</u>
Alison Roach	NCDMV
Paula Windley	NCDMV
P. Marley	NCDMV

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FIRM OR AGENCY AND ADDRESS

<i>DAVID JOYNER</i>	<i>NCTA</i>
<i>Reid Simons</i>	<i>NCTA</i>
<i>Will Corbett</i>	<i>OCCB</i>
<i>Mark Pearce</i>	<i>OCCB</i>
<i>PAUL Stock</i>	<i>NCBA</i>
<i>Nathan Batts</i>	<i>NCBA</i>
<i>Henry Hutson</i>	<i>N.C.B.A.</i>
<i>GEORGE SODDATH</i>	<i>PBY</i>
<i>Chris Kulda</i>	<i>CML</i>
<i>James Gheen</i>	<i>Intern for Senator Doug Berger</i>
<i>Laura Ellen Pisoni</i>	<i>NCCN</i>

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NAME

FIRM OR AGENCY AND ADDRESS

<i>Spencer Flegger</i>	<i>DOA</i>
<i>James D. Staton</i>	<i>DOA - P+C</i>
<i>RALPH EDELBERG</i>	<i>P+C</i>
<i>Jim WESTBROOK</i>	<i>P+C</i>
<i>Elizabeth Dutton</i>	<i>NCRM</i>
<i>Al Ripley</i>	<i>NC - Justice Ctr</i>
<i>Betty Turner</i>	<i>Bank of America</i>
<i>Rose Williams</i>	<i>DOI</i>
<i>John Polanski</i>	<i>NCRM</i>

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Date

*Tuesday.
June 3, 2008*VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

*Amy Fullbright**Huntton's Wms*

Principal Clerk
Reading Clerk

CORRECTED NOTICE—BILL ADDED

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 10, 2008	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1697	Toll Road Enforcement/Authority Changes.	Senator Jenkins
SB 1698	Express Permitting Review Program.	Senator Jenkins
SB 1797	State Tire Contract.	Senator Jenkins
SB 1891	Change Format of Drivers Licenses/Under 21.	Senator Bingham

Senator R. C. Soles, Jr., Chair

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, June 10, 2008, 11:00 AM
1027

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1697	Toll Road Enforcement/Authority Changes.	Senator Jenkins
SB 1698	Express Permitting Review Program.	Senator Jenkins
SB 1797	State Tire Contract.	Senator Jenkins
SB 1891	Change Format of Drivers Licenses/Under 21	Senator Bingham

Presentations

Other Business

Adjournment

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, June 10, 2008
Room 1027, Legislative Building
Minutes

The Senate Commerce, Small Business and Entrepreneurship Committee met on Tuesday, June 10, 2008, at 11:00 a.m. in Room 1027 of the Legislative Building. Nineteen members of the Committee were present. Pages assisting with the meeting were: Kerry Johnson of Kipling, sponsored by Senator Blake, Daniel Gunn of Burlington, also sponsored by Senator Blake; Jeremy Glenn of Stanley, sponsored by Senator Forrester; Mary Catherine Stroupe of Cherryville, sponsored by Senator Hoyle, and Sean Rankin of Dallas, also sponsored by Senator Hoyle; and Helen Wilson of Fuquay Varina, sponsored by Senator Stevens.

Senator Soles called the meeting to order and recognized Senator Bob Rucho who has been named to replace Senator Pittinger. Senator Soles invited him to sit at the table and participate in the meeting since he will also be replacing Senator Pittinger as a member of the Committee.

The first order of business was consideration of Senate Bill 1797, State Tire Contract. Senator Hoyle moved the adoption of the proposed committee substitute. Motion carried. Senator Jenkins, sponsor of the bill, was recognized for an explanation. (See attachment prepared by Committee Counsel for a detailed summary.) Senator Phil Berger moved to give the Committee Substitute for Senate Bill 1797 a favorable report. Motion carried.

The next bill on the agenda was Senate Bill 1697, Toll Enforcement/Auth. Changes/NC-VA Compact. Senator Hoyle moved the adoption of the proposed committee substitute. Senator Jenkins was recognized for an explanation. (See attachment prepared by Committee Counsel for a detailed summary.) Mr. David Joyner, Executive Director of the N. C. Turnpike Authority, and Mr. Jim Trogden, General Assembly staff member, assisted in answering questions from the Committee. Mr. Charles Marshall, N. C. Press Association, objected to Section 9. Senator Hoyle moved that the Committee Substitute for Senate Bill 1697 be given a favorable report and that it be re-referred to Finance. Motion carried.

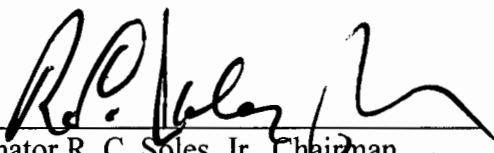
Senate Bill 1698, Express Permitting Review Program, was the next item on the agenda. Senator Jenkins was recognized for an explanation. (See attachment prepared by Committee Counsel for a detailed summary.) Senator Phil Berger moved the adoption of the proposed committee substitute for discussion purposes. Following discussion, Senator Stephens moved that the Committee Substitute for SB 1698 be given a favorable report and that it be re-referred to the Finance Committee. Motion carried.

The last item for consideration was Senate Bill 1891, Change Format of Drivers Licenses/Under 21. Senator Bingham, sponsor of the bill, was recognized to explain the bill. (See attachment prepared by Committee Counsel for a detailed summary.) Senator Phil Berger moved to give the Committee Substitute for Senate Bill 1891 a favorable report. Motion carried.

Minutes
June 10, 2008
Page 2

Senator Soles announced that First Citizens Bank had invited the Committee to visit their corporate headquarters next Wednesday, June 18th at 11:30 a.m., and he hoped all members would be able to attend.

There being no further business the meeting adjourned at 12 Noon.



Senator R. C. Soles, Jr., Chairman



Joan R. Leatherman, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
REPORT**

Senator R. C. Soles, Jr., Chair

Tuesday, June 10, 2008

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

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

S.B.	1697	Toll Road Enforcement/Authority Changes.	
		Draft Number:	PCS55734
		Sequential Referral:	None
		Recommended Referral:	Finance
		Long Title Amended:	Yes
S.B.	1698	Express Permitting Review Program.	
		Draft Number:	PCS15295
		Sequential Referral:	None
		Recommended Referral:	Finance
		Long Title Amended:	No
S.B.	1797	State Tire Contract.	
		Draft Number:	PCS75581
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No
S.B.	1891	Change Format of Drivers Licenses/Under 21.	
		Draft Number:	PCS35598
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 4

Committee Clerk Comments:

S.B. **1697**
ID N2315

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Senator(s)

Jenkins

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING

MAY 21 2008

AND REFERRED TO COMMITTEE

ON *Commerce, Small*

Bus & Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

1

SENATE BILL 1697*

Short Title: Toll Road Enforcement/Authority Changes.

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"Toll Enforcement.

"§ 20-400. Definitions.

Unless the context requires otherwise, the following definitions apply to this Article to the defined words and phrases and their cognates:

- (1) Authority. – The North Carolina Turnpike Authority acting directly or through its duly authorized officers or agents to collect tolls or fees for the use of any road, bridge, or tunnel designated as a toll facility.
- (2) Processing agent. – A person or a public or private agency authorized by the Authority, responsible for the processing of the notices of unpaid tolls pursuant to this Article.
- (3) Toll enforcement officer. – A person authorized by the Authority to review and issue toll evasion citations and penalties in accordance with this Article and the operating procedures of the Authority.
- (4) Toll evasion violation. – The use of a toll facility without payment of tolls as set and established by the Authority.
- (5) Toll facility. – Any road, bridge, or tunnel for which tolls or fees may be charged for the use thereof pursuant to Article 6H of Chapter 136 of the General Statutes.

"§ 20-401. Payment of toll on toll facility required.

1 (a) A person shall not use a toll facility without payment of tolls as established in
2 accordance with the operating procedures of the Authority.

3 (b) If a vehicle is determined by automated or electronic imaging devices, visual
4 observation, or otherwise to have operated on a toll facility without payment of a toll,
5 the owner of the vehicle may be issued a notice of unpaid toll by the Authority, or a
6 processing agent, within 72 hours of the toll facility use.

7 (1) The notice shall specifically set forth the following:

8 a. The approximate date, time, and segment or segments of the toll
9 facility or facilities used.

10 b. The image of the vehicle registration plate when an electronic
11 image is available.

12 c. If practicable, the registration expiration date and the make of
13 the vehicle.

14 d. The amount of the toll and any processing fee due.

15 e. The date payment is due and information regarding how
16 payment may be made.

17 f. A clear and concise explanation of the procedures for contesting
18 the toll and appealing an adverse decision.

19 (2) The notice shall be processed by officials or agents of the Authority, or
20 a processing agent, and shall be forwarded by personal service or first
21 class mail to the address given on the motor vehicle registration.

22 (3) If accurate information concerning the identity and address of the
23 registered owner of the vehicle is not available to the processing agent
24 within 30 days of the violation, the Authority or processing agent shall
25 have an additional 45 calendar days to obtain such information and
26 forward the notice of unpaid toll.

27 (4) Where the registered owner is a repeat violator, the processing agent
28 may forward the notice of unpaid toll within 90 calendar days of the
29 violation. 'Repeat violator' means any registered owner that has had
30 more than five violations issued pursuant to this section in any 30-day
31 period within the preceding 12-month period. Notwithstanding this
32 section, a law enforcement officer may issue a citation as appropriate
33 pursuant to this Chapter to a repeat violator when the officer observes
34 such individual immediately operating a vehicle, identified in five or
35 more violations, on a toll facility.

36 (c) If the owner fails to comply with the direction on the notice of unpaid toll by
37 failing to pay the toll and any processing fee due or contest the toll within 30 days after
38 the date the notice of unpaid toll is served or mailed, the owner shall have waived the
39 right to contest the toll and may be issued a toll evasion violation citation subject to a
40 civil penalty not to exceed one hundred dollars (\$100.00) pursuant to G.S. 20-405. The
41 Authority shall establish procedures for the collection of these penalties and may
42 enforce the penalties by civil action in the nature of debt.

43 (d) The owner of a vehicle shall be responsible for a toll unless the owner can
44 furnish evidence that the vehicle was, at the time of the violation, in the care, custody,

1 or control of another person. The owner of the vehicle shall not be responsible for a toll
2 if the owner of the vehicle, within 30 days after the date of personal service or mailing
3 of the notice of unpaid toll, furnishes the Authority or processing agent either of the
4 following:

5 (1) A sworn affidavit stating the name and address of the person or
6 company who had the care, custody, and control of the vehicle. If the
7 vehicle involved was, at the time, a long-term lease or rental, as
8 defined in G.S. 105-187.1, the affidavit must be supported with
9 evidence that supports the affidavit that may include a copy of the
10 written lease or rental agreement.

11 (2) A sworn affidavit stating that the vehicle involved was, at the time,
12 stolen. The affidavit must be supported with evidence that supports the
13 affidavit, including insurance or police report information.

14 (3) A sworn affidavit stating that the vehicle involved, at the time, had
15 been sold or transferred by the registered owner, served to another
16 person prior to the date of the alleged violation. The affidavit must be
17 supported with evidence that supports the affidavit that may include a
18 copy of the certificate of title or insurance information.

19 (e) A toll evasion violation shall be deemed a noncriminal violation for which no
20 points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the
21 vehicle nor insurance points as authorized by G.S. 58-36-65.

22 **"§ 20-402. Processing fee.**

23 (a) Outsourcing. – The Authority may contract for the processing of notices of
24 unpaid tolls that remain outstanding 72 hours or more after a vehicle operates upon a
25 toll facility without payment of the toll.

26 (b) Fee. – For any unpaid toll that remains outstanding 72 hours or more after a
27 vehicle operates upon a toll facility without payment of the toll, the Authority may
28 establish a processing fee to cover only the actual expenses related to collecting unpaid
29 tolls, not to exceed ten (\$10.00) dollars.

30 (c) Use. – A processing fee is a receipt of the Authority and shall be applied only
31 to the actual costs of collecting unpaid tolls. The proceeds must be credited to a special
32 account within the Authority and shall be expended only as provided in this subsection.
33 The proceeds of the fee shall not be used for any purpose that is not directly and
34 primarily related to the collection of unpaid tolls. The Authority may use the proceeds
35 for the purposes listed in this subsection. Any remaining fee proceeds shall remain in
36 the special account until spent for the costs of collection of unpaid tolls. The Authority
37 and the Office of State Budget and Management shall account for all expenditures from
38 the fund using accounting procedures that clearly distinguish cost allocable to collecting
39 unpaid tolls from costs allocable to other purposes and demonstrate that none of the fee
40 proceeds are used for any purpose other than collecting unpaid tolls.

41 (d) Application of Fees. – The Authority may apply the fee proceeds for the
42 following purposes:

43 (1) To pay contractors for collecting unpaid tolls pursuant to subsection
44 (a) of this section.

- (2) To pay for vehicle registration identifying services, not to exceed five hundred thousand dollars (\$500,000) per year.
- (3) To pay for personal service, postage or other delivery charges for correspondence directly and primarily relating to collecting unpaid tolls, not to exceed five hundred thousand dollars (\$500,000) per year.
- (4) To pay for toll collection operating expenses for the Authority's Customer Service Center, including employees, equipment, hardware, and software directly and primarily related to collecting unpaid tolls.

"§ 20-403. Administrative adjudication.

The Authority shall institute a nonjudicial administrative hearing procedures to review citations or penalties issued or assessed under this Article, said hearings which may be conducted by either the Authority or an Administrative Hearing Officer appointed by the Authority. The provisions of Chapter 150B of the General Statutes shall not apply to the Authority or its hearing officers.

"§ 20-404. Judicial review.

(a) The contestant may seek judicial review of the Authority or processing agency's final decision by filing a written notice of appeal to the district court, in the county where the alleged violation took place, within 20 days after the mailing of the final decision by the Authority or processing agent. On appeal the standard of review shall be de novo. The contents of the Authority or processing agent's file in the case on appeal shall be received in evidence if the contents can be shown not to create an unfair prejudice toward the alleged violator. A copy of a toll evasion citation shall be prima facie evidence of the facts stated therein. A copy of the written notice of appeal shall be served upon the Authority or the processing agent in a manner consistent with Rule 4 of the North Carolina Rules of Civil Procedure.

(b) If no written notice of appeal of the Authority or Administrative Hearing Officer decision is filed within the period set forth in subsection (a) of this section, the decision shall be deemed final.

(c) If the toll evasion penalty has not been deposited and the decision is adverse to the contestant, the Authority or processing agent may, promptly after the decision becomes final, proceed to collect the penalty under G.S. 20-405.

(d) Vehicle registration shall be suspended pursuant to G.S. 20-54 for nonpayment of tolls, fees, or penalties assessed pursuant to this Article if the tolls, fees, or penalties remain unpaid 6 months beyond the date a decision is deemed final pursuant to subsection (b) and (c) of this section.

"§ 20-405. Toll evasion penalties.

(a) A schedule of toll evasion penalties for toll evasion violations shall be established by the Authority, but shall not exceed the amount of the unpaid toll plus one hundred dollars (\$100.00) per violation.

(b) Toll evasion penalties under this Article shall be collected as civil penalties.

(c) If the toll evasion penalty is received by the person authorized to receive the deposit of the toll evasion penalty and there is no contest as to that toll evasion violation, the proceedings under this Article shall terminate.

(d) The amount of the unpaid toll shall be retained by or remitted to the Authority. The clear proceeds from the citations issued pursuant to this Article shall be paid to the Civil Penalty and Forfeiture Fund. For the purposes of determining the clear proceeds derived from the citations, the following expenses, not to exceed ten percent (10%) of the civil penalty assessed pursuant to subsection (b) of this section, are authorized to be deducted from each civil penalty assessed pursuant to the provisions of subsection (b) of this section:

(1) The cost of materials and postage directly related to the printing and mailing of a citation sent to the owner and, if necessary, the driver of the vehicle.

(2) The cost of computer services directly related to the production and mailing of a citation described in subdivision (1) of this subsection.

(e) The Authority may assess a collection assistance fee against the owner and, if necessary, driver of the vehicle under the following conditions:

(1) The civil penalty has not been paid within 30 days after a toll evasion citation is issued including a statement that a collection assistance fee will be assessed if the penalty is not paid within said time period. A collection assistance fee shall not exceed twenty percent (20%) of the civil penalty assessed pursuant to this section.

(2) Collection assistance fees shall be placed in a separate fund that may be used only for the purpose of paying for the costs of collection expended to collect civil penalties that remain unpaid 30 days pursuant to subdivision (1) of this subsection.

Amounts collected must be credited first to the payment of the civil penalty and then to the collection assistance fee.

"§ 20-406. Use of information.

No information obtained pursuant to this Article shall be used for any purpose other than to facilitate the enforcement of toll collections pursuant to this Article, unless required for law enforcement investigative purposes or otherwise ordered by a court of competent jurisdiction.

"§ 20-407. Authority to enter into cooperative and reciprocal agreements.

The Authority is authorized to enter into cooperative and reciprocal agreements with other states or their agents to receive and share vehicle identification information, including registered vehicle owner names and addresses and such other information necessary to facilitate the enforcement of toll collections with respect to nonresident vehicles."

SECTION 2. G.S. 20-54 is amended by adding a new subdivision to read:

"(10) The North Carolina Turnpike Authority has provided notice to the owner of a registered vehicle that is subject to unpaid tolls, fees, or penalties assessed in accordance with Article 18 of this Chapter."

SECTION 3. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or

1 who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any
2 part or portion of a registration plate or the figures or letters thereon, or who shall place
3 or deposit or cause to be placed or deposited any oil, grease, or other substance upon
4 such registration plates for the purpose of making dust adhere thereto, or who shall
5 deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall
6 display a number plate in other than a horizontal upright position, shall be guilty of a
7 Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or
8 cause to be covered any part or portion of a registration plate or the figures or letters
9 thereon by any device designed or intended to prevent or interfere with the taking of a
10 clear photograph of a registration plate by a traffic control or toll collection system
11 using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator
12 of a motor vehicle who shall otherwise intentionally cover any number or registration
13 renewal sticker on a registration plate with any material that makes the number or
14 registration renewal sticker illegible commits an infraction and shall be fined under
15 G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that
16 are not designed or intended to prevent or interfere with the taking of a clear photograph
17 of a registration plate by a traffic control or toll collection system using cameras.

18 **SECTION 4.** G.S. 136-89.183(a)(2) reads as rewritten:

19 "(2) To study, plan, develop, and undertake preliminary design work on up
20 to nine Turnpike Projects. At the conclusion of these activities, the
21 Turnpike Authority is authorized to design, establish, purchase,
22 construct, operate, and maintain the following projects:

- 23 a. Triangle Parkway-Parkway Expressway, including segments
24 also known as NC 540, Triangle Parkway and Western Wake
25 Freeway in Wake and Durham Counties.
26 b. Gaston East-West Connector-Connector, also known as the
27 Garden Parkway.
28 c. Monroe Connector-Connector/Bypass.
29 d. Cape Fear Skyway.
30 e. A bridge of more than two miles in length going from the
31 mainland to a peninsula bordering the State of
32 Virginia-Virginia, pursuant to G.S. 136.89.183A.
33 f. I-540 in Wake and Durham Counties.

34 Any other project proposed by the Authority in addition to the projects
35 listed in this subdivision must be approved by the General Assembly
36 prior to construction.

37 A Turnpike Project selected for construction by the Turnpike
38 Authority shall be included in any applicable locally adopted
39 comprehensive transportation plans and shall be shown in the current
40 State Transportation Improvement Plan prior to the letting of a
41 contract for the Turnpike Project."

42 **SECTION 5.** G.S. 136-89.183 by adding a new subsection to read:

43 "(c) Notwithstanding any other provisions of law to the contrary, all moneys
44 received by the Authority shall be deemed to be trust funds to be held and applied solely

1 as provided in this Article. The resolution authorizing any obligations or trust agreement
2 securing the same may provide that any of such moneys may be temporarily invested
3 pending the disbursement thereof and shall provide that any officer with whom, or any
4 bank or trust company with which, such moneys shall be deposited shall act as trustee of
5 such moneys and shall hold and apply the same for the purposes hereof, subject to such
6 regulations as such resolution or trust agreement may provide. Subject to any such
7 regulations in a resolution or trust agreement, any moneys received by the Authority and
8 available to the Authority may be invested by the Authority in any investments
9 permitted by G.S. 159-30, except that for purposes of G.S. 159-30(b) the Authority may
10 deposit moneys at interest in banks or trust companies outside as well as in this State, as
11 long as moneys on deposit outside this State are collateralized to the same extent and
12 manner as if deposited in this State."

13 **SECTION 6.** G.S. 136-89.194 reads as rewritten:

14 **"§ 136-89.194. Laws applicable to the Authority; exceptions.**

15 (a) Motor Vehicle Laws. – The Turnpike System shall be considered a
16 "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in
17 G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State
18 Highway Patrol and the Division of Motor Vehicles, shall have the same powers and
19 duties on the Turnpike System as on any other highway or public vehicular area.

20 (b) Contracting. – For the purposes of implementing this Article, the Authority
21 shall solicit competitive proposals for the construction of Turnpike Projects in
22 accordance with the provisions of Article 2 of this Chapter. Contracts for professional
23 engineering services and other kinds of professional or specialized services necessary in
24 connection with construction of Turnpike Projects shall be solicited in accordance with
25 procedures utilized by the Department of Transportation.

26 (c) Alternative Contracting Methods. – Notwithstanding the provisions of
27 subsection (b) of this section, the Authority may authorize the use of alternative
28 contracting methods if:

- 29 (1) The authorization applies to an individual project;
- 30 (2) The Authority has concluded, and documented in writing, that the
31 alternative contracting method is necessary because the project cannot
32 be completed utilizing the procedures of Article 2 of this Chapter
33 within the necessary time frame or available funding or for other
34 reasons the Authority deems in the public interest;
- 35 (3) The Authority has provided, to the extent possible, for the solicitation
36 of competitive proposals prior to awarding a contract; and
- 37 (4) The approved alternative contracting method provides for reasonable
38 compliance with the disadvantaged business participation goals of
39 G.S. 136-28.4.

40 (d) Entry for Surveys. – The Turnpike Authority and its employees and
41 contractors shall have the same right of entry for surveys, borings, soundings, or
42 examinations as granted the Department of Transportation in G.S. 136-120.

43 (e) Documents and Records. – The diaries kept in connection with construction
44 or repair contracts entered into by the Turnpike Authority and any analysis generated by

1 any bid analysis and management system, including work papers, documents, and the
2 output of automated systems associated with the analyses of bids of the Turnpike
3 Authority, shall have the same public record status as the records of the Department of
4 Transportation in G.S. 136-28.5.

5 (f) Adjustment and Resolution of Turnpike Construction Claim. – The provisions
6 of G.S. 136-29 shall apply to the Turnpike Authority except that references in
7 G.S. 136-29 to Turnpike Authority and the 'State Highway Administrator' shall be to the
8 'Turnpike Authority' and the 'Chief Engineer', respectively. References in G.S. 136-29
9 to a 'State Highway' shall be to a 'Turnpike facility.'

10 (g) Article 3 of Chapter 143 of the General Statutes shall not apply to the
11 Turnpike Authority, but as feasible, the Authority may use the services of the
12 Department of Administration in procuring goods and services for the Authority not
13 specific to establishing and operating toll revenue systems.

14 (g) Article 3D of Chapter 147 of the General Statutes shall not apply to the
15 Turnpike Authority, but as feasible, the Authority may use the services of State
16 Information Technology in procuring equipment, goods, and services not specific to
17 establishing and operating toll revenue systems.

18 (h) Chapter 150B of the General Statutes shall not apply to the Turnpike
19 Authority, except as provided in G.S. 136-89.194(f)."

20 **SECTION 7.** G.S. 47-30(l) reads as rewritten:

21 "(l) The provisions of this section shall not apply to the registration of highway
22 right-of-way plans provided for in G.S. 136-19.4 G.S. 136-19.4, the Turnpike Authority
23 right-of-way plans provided for in G.S. 136-89.184A, nor to registration of roadway
24 corridor official maps provided in Article 2E of Chapter 136."

25 **SECTION 8.** Chapter 136 of the General Statutes is amended by adding a
26 new section to read:

27 **"§ 136-89.184A. Registration of right-of-way plans.**

28 (a) A copy of the cover sheet and plan and profile sheets of the final right-of-way
29 plans for all Turnpike Authority projects, on those projects for which plans are
30 prepared, under which right-of-way or other interest in real property is acquired or
31 access is controlled shall be certified by the Turnpike Authority to the register of deeds
32 of the county or counties within which the project is located. The Authority shall certify
33 said plan sheets to the register of deeds within two weeks from their formal approval by
34 the Board of Directors.

35 (b) The copy of the plans certified to the register of deeds shall consist of a
36 Xerox, photographic, or other permanent copy, except for plans electronically
37 transmitted pursuant to subsection (c) of this section and shall measure approximately
38 17 inches by 11 inches including no less than one and one-half inches binding space on
39 the left-hand side.

40 (c) With the approval of the county in which the right-of-way plans are to be
41 filed, the Authority may transmit the plans electronically.

42 (d) Notwithstanding any other provision of law, upon receipt of the original
43 certified copy of the right-of-way plans, the register of deeds shall record the
44 right-of-way plans and place the same in a book maintained for that purpose, and the

1 register of deeds shall maintain a cross-index to the right-of-way plans by number of
2 roads affected, if any, and by identification number. No probate before the clerk of the
3 superior court shall be required.

4 (e) If after the approval of said final right-of-way plans, the Board of Directors
5 shall by resolution alter or amend said right-of-way or control of access, the Turnpike
6 Authority, within two weeks from the adoption by the Board of Directors of the
7 alteration or amendment, shall certify to the register of deeds in the county or counties
8 within which the project is located a copy of the amended plan and profile sheets
9 approved by the Board of Directors and the register of deeds shall remove the original
10 plan sheets and record the amended plan sheets in lieu thereof.

11 (f) The register of deeds in each county shall collect a fee from the Turnpike
12 Authority for recording right-of-way plans and profile sheets in the amount set out in
13 G.S. 161-10."

14 **SECTION 9.** Chapter 136 of the General Statutes is amended by adding a
15 new section to read:

16 **"§ 136-89.184B. Project cost estimates.**

17 All cost estimates prepared for the purpose of comparing bids shall be confidential
18 and shall not be disclosed until after the opening of bids for a project."

19 **SECTION 10.** Sections 1, 2 and 3 of this act become effective December 1,
20 2008. The remainder of this act is effective when it becomes law.



SENATE BILL 1697: Toll Road Enforcement/Authority Changes

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 10, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1697-CSSU-70[v.4]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for Senate Bill 1697 would add provisions to State law to enforce collection of tolls at toll facilities operated by the North Carolina Turnpike Authority and modify other statutory provisions applicable to the Turnpike Authority. The PCS would also establish the Virginia-North Carolina Interstate Toll Road Compact.*

BILL ANALYSIS: The following is a summary of the Proposed Committee Substitute* for Senate Bill 1697:

Toll Enforcement Authority Established (Section 1) – Strong enforcement legislation for bond rating agencies is a prerequisite for investment grade credit ratings and a requirement for a federal TIFIA loan. Strong enforcement language is also a requirement by bond investors for an all electronic, start-up toll facilities. This legislation incorporates language adopted by several other states and includes civil penalties and processes necessary to accomplish this objective.

Toll Enforcement Process Timeline

Step 1: Toll Facility Used – Toll Due (Payment Options – cash, check, or credit card via walk-up facilities or account)

Tolls may be paid without incurring fees or penalties for up to 15 days.

Step 2: Notice of Payment

If toll is not paid within 15 days, the Authority may issue a notice of unpaid toll, including a processing fee. (Note: The processing fee may be assessed incrementally as indicated below, but shall not exceed a sum total of \$10.00.) Notice will inform individuals of right to administrative review.

Step 3: Citation

If toll and fee is not paid, or administrative review not requested within 30 days of receiving the notice, the Authority may issue toll violation citation to collect the unpaid toll plus the adjusted processing fee and a civil penalty of \$25.00 (100% of which goes to education). (Note: The civil penalty may be assessed incrementally as indicated below, but shall not exceed a sum total of \$100.00.) Citation will inform individuals of right to administrative review.

If toll, fee and civil penalty is not paid, or administrative review not requested within 30 days of receiving citation, the Authority may issue final notice of citation to collect the unpaid toll plus the adjusted processing fee and civil penalty (100% of which goes to education, unless matter is referred to collections as provided below).

A toll evasion violation is a non criminal violation and no insurance points will be assigned to the violator.

Senate Bill 1697

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Step 4: Administrative Hearing and/or Judicial Review

An individual can request administrative review of the toll and/or citation at anytime throughout the enforcement process. A contestant may seek judicial review of a final Authority decision by filing a written notice of appeal. If a citation remains unpaid 6 months after administrative and/or judicial reviews are exhausted, the Authority will notify DMV to withhold the owner's vehicle registration until the fines are paid.

Step 5: Collection Agency Option

The Authority may exercise the option to recover unpaid tolls, fees and penalties through a third party collection agency 30 days after a final notice of citation that has not been appealed. If matter is referred to collections, the Authority would recover costs of collections, not to exceed 20%, as allowed by existing state law (G.S. 115C-457.2).

Other Statutory Modifications –

Sections 2 and 3 amend existing law to conform to the toll enforcement provisions by allowing the Authority to notify DMV to withhold vehicle registrations (G.S. 20-54) and make it an infraction to alter, disguise or conceal any part or portion of vehicle registration plates to prevent or interfere with taking a clear image by a toll collection system using cameras (G.S. 20-63).

Section 4 amends provision in Authority's enabling legislation to clarify approved project descriptions.

Section 5 tracks existing law (G.S. 159-30) to authorize the Authority's investment of funds in the same manner as allowed by municipalities, subject to trust agreement restrictions

Clarifications to the Turnpike Authority's enabling legislation that mirror DOT's procedures –

Section 6(e) provides diaries kept by the Authority in connection with construction and repair contracts have the same public records status as DOT records.

Section 6 (f) authorizes the Authority to adjust and resolve final construction claims in the same manner as DOT.

Sections 7 and 8 amend existing law, allowing the Authority to file right-of-way plans (in lieu of individual parcels) with the appropriate Office of the Register of Deeds in same manner as DOT (G.S. 47-30), and amending the Authority's enabling legislation to set forth parameters for certification of such right-of-way plans.

Section 9 amends the Authority's enabling legislation to provide cost estimates prepared by or on behalf of the Authority remain confidential until after the opening of bids for a project in the same manner as DOT.

Section 10 amends existing law (G.S. 146-65) to exempt the Authority from a requirement to go before the Council of State for approval of each parcel required for right-of-way acquisition

Senate Bill 1697

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Purchasing and Administrative Review regulations – Provides that the Turnpike Authority will comply with its bond indentures provision declaring that the Authority will be the exclusive agency for the purchase, installation, operation and maintenance of all tolling equipment and collections. Accordingly, **Section 6(g) and (h)** would exempt the Authority from State ITS and Purchasing regulations, primarily for the purpose of procuring goods and services specific to establishing and operating toll revenue systems and technology.

Section 6(i) would exempt the Authority from administrative rule-making procedures and processes enabling the Authority to retain control over its tolling operations to maximally meet Bond and Trust Agreement obligations.

Accelerated Pilot Toll Bridge Project –

Section 11 amends G.S. 136-89.183A, authorizing a toll bridge project (the Mid-Currituck Bridge), by adding legislative findings and requiring the Authority to ensure protection of the environment in implementing the project.

Virginia-North Carolina Interstate Toll Road Compact –

Section 12 establishes a compact between Virginia and North Carolina to do the following:

- Set, impose, and collect tolls, not to exceed \$5.00 for a two-axle vehicle, for use of I-95 within the two states' boundaries.
- Share net proceeds from the tolls collected.
- Coordinate efforts to establish welcome centers, rest areas, and facilities for food, fuel, souvenirs, and vehicle repairs and service.

A Compact Commission would be empowered to carry out the purposes of the Compact and would consist of 10 legislative members – five representing North Carolina and five representing Virginia. The chairman of the Commission would be elected by the members from among its membership to serve one year terms, and the chairmanship would rotate between North Carolina and Virginia.

BACKGROUND: Sections 1-10 of the bill were included in the original version of Senate Bill 1697, which was a request of the North Carolina Turnpike Authority and a recommendation of the Joint Legislative Transportation Oversight Committee.

** The summary for sections 1-10 of the bill was provided by the Turnpike Authority.*

S1697e1-SMSU-CSSU-70v4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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D

SENATE BILL 1697*
PROPOSED COMMITTEE SUBSTITUTE S1697-CSSUF-70 [v.4]

6/9/2008 9:31:56 PM

Short Title: Toll Enforcement/Auth. Changes/NC-VA Compact.

(Public)

Sponsors:

Referred to:

May 21, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE ENFORCEMENT OF TOLLS AT TOLL
3 FACILITIES OPERATED BY THE NORTH CAROLINA TURNPIKE
4 AUTHORITY AND TO MODIFY LAWS APPLICABLE TO THE NORTH
5 CAROLINA TURNPIKE AUTHORITY, AS RECOMMENDED BY THE JOINT
6 LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE; AND TO
7 ESTABLISH THE VIRGINIA-NORTH CAROLINA INTERSTATE TOLL ROAD
8 COMPACT.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Chapter 20 of the General Statutes is amended by adding a
11 new Article to read:

"Article 18.

"Toll Enforcement.

14 "§ 20-400. Definitions.

15 Unless the context requires otherwise, the following definitions apply to this Article
16 to the defined words and phrases and their cognates:

- 17 (1) Authority. – The North Carolina Turnpike Authority acting directly or
18 through its duly authorized officers or agents to collect tolls or fees for
19 the use of any road, bridge, or tunnel designated as a toll facility.
20 (2) Processing agent. – A person or a public or private agency authorized
21 by the Authority, responsible for the processing of the notices of
22 unpaid tolls pursuant to this Article.
23 (3) Toll enforcement officer. – A person authorized by the Authority to
24 review and issue toll evasion citations and penalties in accordance with
25 this Article and the operating procedures of the Authority.
26 (4) Toll evasion violation. – The use of a toll facility without payment of
27 tolls as set and established by the Authority.

- (5) Toll facility. – Any road, bridge, or tunnel for which tolls or fees may be charged for the use thereof pursuant to Article 6H of Chapter 136 of the General Statutes.

"§ 20-401. Payment of toll on toll facility required.

(a) A person shall not use a toll facility without payment of tolls as established in accordance with the operating procedures of the Authority. Provided, on toll facilities utilizing electronic toll collection systems exclusively, the Authority shall provide adequate signage to provide reasonable notice of toll payment options available prior to the issuance of a notice of unpaid toll as provided in subsection (b) of this section, including directional signage to Authority facilities or contract retail outlets that accept toll payments within the vicinity of toll facilities.

(b) If a vehicle is determined by automated or electronic imaging devices, visual observation, or otherwise to have operated on a toll facility without payment of a toll, the owner of the vehicle may be issued a notice of unpaid toll by the Authority, or a processing agent, no sooner than 15 days after the toll facility use.

- (1) The notice shall specifically set forth the following:

- a. The approximate date, time, and segment or segments of the toll facility or facilities used.
- b. The image of the vehicle registration plate when an electronic image is available.
- c. If practicable, the registration expiration date and the make of the vehicle.
- d. The amount of the toll and any processing fee due.
- e. The date payment is due and information regarding how payment may be made.
- f. A clear and concise explanation of the procedures for contesting the toll and appealing an adverse decision.

- (2) The notice shall be processed by officials or agents of the Authority, or a processing agent, and shall be forwarded by personal service or first class mail to the address given on the motor vehicle registration.

- (3) If accurate information concerning the identity and address of the registered owner of the vehicle is not available to the processing agent within 30 days of the violation, the Authority or processing agent shall have an additional 45 calendar days to obtain such information and forward the notice of unpaid toll.

- (4) Where the registered owner is a repeat violator, the processing agent may forward the notice of unpaid toll within 90 calendar days of the violation. 'Repeat violator' means any registered owner that has had more than five violations issued pursuant to this section in any 30-day period within the preceding 12-month period. Notwithstanding this section, a law enforcement officer may issue a citation as appropriate pursuant to this Chapter to a repeat violator when the officer observes such individual immediately operating a vehicle, identified in five or more violations, on a toll facility.

(c) If the owner fails to comply with the direction on the notice of unpaid toll by failing to pay the toll and any processing fee due or contest the toll within 30 days after the date the notice of unpaid toll is served or mailed, the owner shall have waived the right to contest the toll and may be issued a toll evasion violation citation subject to a civil penalty not to exceed one hundred dollars (\$100.00) pursuant to G.S. 20-405. The Authority shall establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(d) The owner of a vehicle shall be responsible for a toll 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 a toll if the owner of the vehicle, within 30 days after the date of personal service or mailing of the notice of unpaid toll, furnishes the Authority or processing agent any of the following:

(1) A sworn affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle. If the vehicle involved was, at the time, a long-term lease or rental, as defined in G.S. 105-187.1, the affidavit must be supported with evidence that may include a copy of the written lease or rental agreement.

(2) A sworn affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence, including insurance or police report information.

(3) A sworn affidavit stating that the vehicle involved, at the time, had been sold or transferred by the registered owner to another person prior to the date of the alleged violation. The affidavit must be supported with evidence that may include a copy of the certificate of title or insurance information.

(e) A toll evasion violation shall be deemed a noncriminal violation for which no points authorized by G.S. 20-16(c) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

"§ 20-402. Processing fee.

(a) Outsourcing. – The Authority may contract for the processing of notices of unpaid tolls that remain outstanding 15 days or more after a vehicle operates upon a toll facility without payment of the toll.

(b) Fee. – For any unpaid toll that remains outstanding 15 days or more after a vehicle operates upon a toll facility without payment of the toll, the Authority may establish a processing fee to cover only the actual expenses related to collecting unpaid tolls, not to exceed ten (\$10.00) dollars.

(c) Use. – A processing fee is a receipt of the Authority and shall be applied only to the actual costs of collecting unpaid tolls. The proceeds must be credited to a special account within the Authority and shall be expended only as provided in this subsection. The proceeds of the fee shall not be used for any purpose that is not directly and primarily related to the collection of unpaid tolls. The Authority may use the proceeds for the purposes listed in this subsection. Any remaining fee proceeds shall remain in

1 the special account until spent for the costs of collection of unpaid tolls. The Authority
2 and the Office of State Budget and Management shall account for all expenditures from
3 the fund using accounting procedures that clearly distinguish cost allocable to collecting
4 unpaid tolls from costs allocable to other purposes and demonstrate that none of the fee
5 proceeds are used for any purpose other than collecting unpaid tolls.

6 (d) Application of Fees. – The Authority may apply the fee proceeds for the
7 following purposes:

8 (1) To pay contractors for collecting unpaid tolls pursuant to subsection
9 (a) of this section.

10 (2) To pay for vehicle registration identifying services, not to exceed five
11 hundred thousand dollars (\$500,000) per year.

12 (3) To pay for personal service, postage or other delivery charges for
13 correspondence directly and primarily relating to collecting unpaid
14 tolls, not to exceed five hundred thousand dollars (\$500,000) per year.

15 (4) To pay for toll collection operating expenses for the Authority's
16 Customer Service Center, including employees, equipment, hardware,
17 and software directly and primarily related to collecting unpaid tolls.

18 (5) To reimburse the reasonable costs of the Division of Motor Vehicles
19 associated with providing the Authority registered vehicle owner
20 information and processing vehicle registration suspensions through
21 electronic transmission methods, as agreed upon by the Authority and
22 the Division.

23 **"§ 20-403. Administrative adjudication.**

24 The Authority shall institute a nonjudicial administrative hearing procedure to
25 review citations or penalties issued or assessed under this Article. Hearings may be
26 conducted by either the Authority or an Administrative Hearing Officer appointed by
27 the Authority. The provisions of Chapter 150B of the General Statutes shall not apply to
28 the Authority or its hearing officers.

29 **"§ 20-404. Judicial review.**

30 (a) The contestant may seek judicial review of the Authority or processing
31 agency's final decision by filing a written notice of appeal to the district court, in the
32 county where the alleged violation took place, within 20 days after the mailing of the
33 final decision by the Authority or processing agent. On appeal the standard of review
34 shall be de novo. The contents of the Authority or processing agent's file in the case on
35 appeal shall be received in evidence if the contents can be shown not to create an unfair
36 prejudice toward the alleged violator. A copy of a toll evasion citation shall be prima
37 facie evidence of the facts stated therein. A copy of the written notice of appeal shall be
38 served upon the Authority or the processing agent in a manner consistent with Rule 4 of
39 the North Carolina Rules of Civil Procedure.

40 (b) If no written notice of appeal of the Authority or Administrative Hearing
41 Officer decision is filed within the period set forth in subsection (a) of this section, the
42 decision shall be deemed final.

1 (c) If the toll evasion penalty has not been deposited and the decision is adverse
2 to the contestant, the Authority or processing agent may, promptly after the decision
3 becomes final, proceed to collect the penalty under G.S. 20-405.

4 (d) Vehicle registration shall be suspended pursuant to G.S. 20-54 for
5 nonpayment of tolls, fees, or penalties assessed pursuant to this Article if the tolls, fees,
6 or penalties remain unpaid six months beyond the date a decision is deemed final
7 pursuant to subsection (b) and (c) of this section.

8 **"§ 20-405. Toll evasion penalties.**

9 (a) A schedule of toll evasion penalties for toll evasion violations shall be
10 established by the Authority, but shall not exceed the amount of the unpaid toll plus one
11 hundred dollars (\$100.00) per violation.

12 (b) Toll evasion penalties under this Article shall be collected as civil penalties.

13 (c) If the toll evasion penalty is received by the person authorized to receive the
14 deposit of the toll evasion penalty and there is no contest as to that toll evasion
15 violation, the proceedings under this Article shall terminate.

16 (d) The amount of the unpaid toll shall be retained by or remitted to the
17 Authority. The clear proceeds from the citations issued pursuant to this Article shall be
18 paid to the Civil Penalty and Forfeiture Fund. For the purposes of determining the clear
19 proceeds derived from the citations, the following expenses, not to exceed ten percent
20 (10%) of the civil penalty assessed pursuant to subsection (b) of this section, are
21 authorized to be deducted from each civil penalty assessed pursuant to the provisions of
22 subsection (b) of this section:

23 (1) The cost of materials and postage directly related to the printing and
24 mailing of a citation sent to the owner and, if necessary, the driver of
25 the vehicle.

26 (2) The cost of computer services directly related to the production and
27 mailing of a citation described in subdivision (1) of this subsection.

28 (e) The Authority may assess a collection assistance fee against the owner and, if
29 necessary, driver of the vehicle under the following conditions:

30 (1) The civil penalty has not been paid within 30 days after a toll evasion
31 citation is issued including a statement that a collection assistance fee
32 will be assessed if the penalty is not paid within said time period. A
33 collection assistance fee shall not exceed twenty percent (20%) of the
34 civil penalty assessed pursuant to this section.

35 (2) Collection assistance fees shall be placed in a separate fund that may
36 be used only for the purpose of paying for the costs of collection
37 expended to collect civil penalties that remain unpaid 30 days pursuant
38 to subdivision (1) of this subsection.

39 Amounts collected must be credited first to the payment of the civil penalty and then
40 to the collection assistance fee.

41 **"§ 20-406. Use of information.**

42 No information obtained pursuant to this Article shall be used for any purpose other
43 than to facilitate the enforcement of toll collections pursuant to this Article, unless

1 required for law enforcement investigative purposes or otherwise ordered by a court of
2 competent jurisdiction.

3 **"§ 20-407. Authority to enter into cooperative and reciprocal agreements.**

4 The Authority is authorized to enter into cooperative and reciprocal agreements with
5 other states or their agents to receive and share vehicle identification information,
6 including registered vehicle owner names and addresses and such other information
7 necessary to facilitate the enforcement of toll collections with respect to nonresident
8 vehicles."

9 **SECTION 2.** G.S. 20-54 is amended by adding a new subdivision to read:

10 **"(10)** The North Carolina Turnpike Authority has provided notice to the
11 owner of a registered vehicle that is subject to unpaid tolls, fees, or
12 penalties assessed in accordance with Article 18 of this Chapter."

13 **SECTION 3.** G.S. 20-63(g) reads as rewritten:

14 **"(g)** Alteration, Disguise, or Concealment of Numbers. – Any operator of a motor
15 vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or
16 partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or
17 who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any
18 part or portion of a registration plate or the figures or letters thereon, or who shall place
19 or deposit or cause to be placed or deposited any oil, grease, or other substance upon
20 such registration plates for the purpose of making dust adhere thereto, or who shall
21 deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall
22 display a number plate in other than a horizontal upright position, shall be guilty of a
23 Class 2 misdemeanor. Any operator of a motor vehicle who shall willfully cover or
24 cause to be covered any part or portion of a registration plate or the figures or letters
25 thereon by any device designed or intended to prevent or interfere with the taking of a
26 clear photograph of a registration plate by a traffic control or toll collection system
27 using cameras commits an infraction and shall be fined under G.S. 14-3.1. Any operator
28 of a motor vehicle who shall otherwise intentionally cover any number or registration
29 renewal sticker on a registration plate with any material that makes the number or
30 registration renewal sticker illegible commits an infraction and shall be fined under
31 G.S. 14-3.1. Nothing in this subsection shall prohibit the use of transparent covers that
32 are not designed or intended to prevent or interfere with the taking of a clear photograph
33 of a registration plate by a traffic control or toll collection system using cameras.

34 **SECTION 4.** G.S. 136-89.183(a)(2) reads as rewritten:

35 **"(2)** To study, plan, develop, and undertake preliminary design work on up
36 to nine Turnpike Projects. At the conclusion of these activities, the
37 Turnpike Authority is authorized to design, establish, purchase,
38 construct, operate, and maintain the following projects:

- 39 a. Triangle Parkway-Expressway, including segments also known
40 as NC 540, Triangle Parkway and Western Wake Freeway in
41 Wake and Durham Counties.
42 b. Gaston East-West Connector-Connector, also known as the
43 Garden Parkway.
44 c. Monroe Connector-Connector/Bypass.

- d. Cape Fear Skyway.
- e. A bridge of more than two miles in length going from the mainland to a peninsula bordering the State of ~~Virginia.~~ Virginia, pursuant to G.S. 136-89.183A.
- f. ~~I-540 in Wake and Durham Counties.~~

Any other project proposed by the Authority in addition to the projects listed in this subdivision must be approved by the General Assembly prior to construction.

A Turnpike Project selected for construction by the Turnpike Authority shall be included in any applicable locally adopted comprehensive transportation plans and shall be shown in the current State Transportation Improvement Plan prior to the letting of a contract for the Turnpike Project."

SECTION 5. G.S. 136-89.183 by adding a new subsection to read:

"(c) Notwithstanding any other provisions of law to the contrary, all moneys received by the Authority shall be deemed to be trust funds to be held and applied solely as provided in this Article. The resolution authorizing any obligations or trust agreement securing the same may provide that any of such moneys may be temporarily invested pending the disbursement thereof and shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as such resolution or trust agreement may provide. Subject to any such regulations in a resolution or trust agreement, any moneys received by the Authority and available to the Authority may be invested by the Authority in any investments permitted by G.S. 159-30, except that for purposes of G.S. 159-30(b) the Authority may deposit moneys at interest in banks or trust companies outside as well as in this State, as long as moneys on deposit outside this State are collateralized to the same extent and manner as if deposited in this State."

SECTION 6. G.S. 136-89.194 reads as rewritten:

"§ 136-89.194. Laws applicable to the Authority; exceptions.

(a) Motor Vehicle Laws. – The Turnpike System shall be considered a "highway" as defined in G.S. 20-4.01(13) and a "public vehicular area" as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on the Turnpike System as on any other highway or public vehicular area.

(b) Contracting. – For the purposes of implementing this Article, the Authority shall solicit competitive proposals for the construction of Turnpike Projects in accordance with the provisions of Article 2 of this Chapter. Contracts for professional engineering services and other kinds of professional or specialized services necessary in connection with construction of Turnpike Projects shall be solicited in accordance with procedures utilized by the Department of Transportation.

(c) Alternative Contracting Methods. – Notwithstanding the provisions of subsection (b) of this section, the Authority may authorize the use of alternative contracting methods if:

- (1) The authorization applies to an individual project;
- (2) The Authority has concluded, and documented in writing, that the alternative contracting method is necessary because the project cannot be completed utilizing the procedures of Article 2 of this Chapter within the necessary time frame or available funding or for other reasons the Authority deems in the public interest;
- (3) The Authority has provided, to the extent possible, for the solicitation of competitive proposals prior to awarding a contract; and
- (4) The approved alternative contracting method provides for reasonable compliance with the disadvantaged business participation goals of G.S. 136-28.4.

(d) Entry for Surveys. – The Turnpike Authority and its employees and contractors shall have the same right of entry for surveys, borings, soundings, or examinations as granted the Department of Transportation in G.S. 136-120.

(e) Documents and Records. – The diaries kept in connection with construction or repair contracts entered into by the Turnpike Authority and any analysis generated by any bid analysis and management system, including work papers, documents, and the output of automated systems associated with the analyses of bids of the Turnpike Authority, shall have the same public record status as the records of the Department of Transportation in G.S. 136-28.5.

(f) Adjustment and Resolution of Turnpike Construction Claim. – The provisions of G.S. 136-29 shall apply to the Turnpike Authority except that references in G.S. 136-29 to the 'Department of Transportation' and the 'State Highway Administrator' shall be to the 'Turnpike Authority' and the 'Chief Engineer', respectively. References in G.S. 136-29 to a 'State highway' shall be to a 'Turnpike facility.'

(g) Article 3 of Chapter 143 of the General Statutes shall not apply to the Turnpike Authority, but as feasible, the Authority may use the services of the Department of Administration in procuring goods and services for the Authority not specific to establishing and operating toll revenue systems. All contract information shall be made a matter of public record in the same manner as set forth in G.S. 147-33.95(a).

(h) Article 3D of Chapter 147 of the General Statutes shall not apply to the Turnpike Authority, but as feasible, the Authority may use the services of State Information Technology in procuring equipment, goods, and services not specific to establishing and operating toll revenue systems.

(i) Chapter 150B of the General Statutes shall not apply to the Turnpike Authority, except as provided in G.S. 136-89.194(f)."

SECTION 7. G.S. 47-30(l) reads as rewritten:

"(l) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in ~~G.S. 136-19.4~~ G.S. 136-19.4, the Turnpike Authority right-of-way plans provided for in ~~G.S. 136-89.184A~~, nor to registration of roadway corridor official maps provided in Article 2E of Chapter 136."

1 SECTION 8. Chapter 136 of the General Statutes is amended by adding a
2 new section to read:

3 **"§ 136-89.184A. Registration of right-of-way plans.**

4 (a) A copy of the cover sheet and plan and profile sheets of the final right-of-way
5 plans for all Turnpike Authority projects, on those projects for which plans are
6 prepared, under which right-of-way or other interest in real property is acquired or
7 access is controlled shall be certified by the Turnpike Authority to the register of deeds
8 of the county or counties within which the project is located. The Authority shall certify
9 said plan sheets to the register of deeds within two weeks from their formal approval by
10 the Board of Directors.

11 (b) The copy of the plans certified to the register of deeds shall consist of a
12 Xerox, photographic, or other permanent copy, except for plans electronically
13 transmitted pursuant to subsection (c) of this section and shall measure approximately
14 17 inches by 11 inches including no less than one and one-half inches binding space on
15 the left-hand side.

16 (c) With the approval of the county in which the right-of-way plans are to be
17 filed, the Authority may transmit the plans electronically.

18 (d) Notwithstanding any other provision of law, upon receipt of the original
19 certified copy of the right-of-way plans, the register of deeds shall record the
20 right-of-way plans and place the same in a book maintained for that purpose, and the
21 register of deeds shall maintain a cross-index to the right-of-way plans by number of
22 roads affected, if any, and by identification number. No probate before the clerk of the
23 superior court shall be required.

24 (e) If after the approval of said final right-of-way plans, the Board of Directors
25 shall by resolution alter or amend said right-of-way or control of access, the Turnpike
26 Authority, within two weeks from the adoption by the Board of Directors of the
27 alteration or amendment, shall certify to the register of deeds in the county or counties
28 within which the project is located a copy of the amended plan and profile sheets
29 approved by the Board of Directors and the register of deeds shall remove the original
30 plan sheets and record the amended plan sheets in lieu thereof.

31 (f) The register of deeds in each county shall collect a fee from the Turnpike
32 Authority for recording right-of-way plans and profile sheets in the amount set out in
33 G.S. 161-10."

34 SECTION 9. Chapter 136 of the General Statutes is amended by adding a
35 new section to read:

36 **"§ 136-89.184B. Project cost estimates.**

37 All cost estimates prepared for the purpose of comparing bids shall be confidential
38 and shall not be disclosed until after the opening of bids for a project."

39 SECTION 10. G.S. 146-65 reads as rewritten:

40 **"§ 146-65. Exemptions from Chapter.**

41 None of the provisions of Chapter 146 shall apply to:

- 42 (1) The acquisition of highway rights-of-way, borrow pits, or other
43 interests or estates in land acquired for the same or similar purposes, or
44 to the disposition thereof, by the Board of Transportation; or

(2) The North Carolina State Ports Authority, the authority and powers thereof set forth or provided for by G.S. 143B-452 through G.S. 143B-467 or to the exercise of all or any of such authority and ~~powers, powers; or~~

(3) The acquisition of rights-of-way, borrow pits, or other interests or estates in land acquired for turnpike project purposes, or to the disposition thereof, by the North Carolina Turnpike Authority.

Nor shall the provisions of Chapter 146 abrogate or alter any otherwise valid contract or agreement heretofore made and entered into by the State of North Carolina or by any of its subdivisions or agencies during the term or period of such contract or agreement."

SECTION 11. G.S. 136-89.183A reads as rewritten:

"§ 136-89.183A. Accelerated Pilot Toll Bridge Project.

(a) Findings. – The General Assembly finds that there is a need for a bridge connecting the Currituck County mainland to the Currituck County Outer Banks; that the bridge should be implemented as a toll bridge; that the bridge should be implemented in a manner that protects the natural environment and quality of life on the Outer Banks; and that the character of the existing road system in Currituck County and Dare County Outer Banks should be preserved.

~~(a)(b)~~ Contract to Construct Accelerated Pilot Toll Bridge Project. – The Authority shall contract with a single private firm to design, obtain all necessary permits for, and construct the toll bridge described in G.S. 136-89.183(a)(2), known as the Mid-Currituck Bridge, a bridge of more than two miles in length going from the mainland to a peninsula bordering the State of Virginia, in order to provide accelerated, efficient, and cost-effective completion of the project.

~~(b)(c)~~ Preconstruction Participation. – In addition to the authority granted by G.S. 136-89.191, the Department shall participate in the cost of preconstruction activities related to the project described in this section, if requested by the Authority.

(d) Environmental Protection. – The Authority shall ensure that the Mid-Currituck Bridge is implemented in a manner that accomplishes all of the following:

(1) Ensures the preservation of water quality in Currituck Sound.

(2) Mitigates for environmental impacts of the bridge on the Currituck County mainland and the Outer Banks.

(3) Reduces traffic congestion and vehicle miles traveled, and preserves the character of the existing road system, in Dare County and Currituck County on the Outer Banks.

~~(e)(e)~~ Report on Project. – The Authority shall report to the Joint Legislative Transportation Oversight Committee on December 1, 2005, and each December 1 thereafter until completion, on the progress of the accelerated pilot toll bridge project described in this section."

SECTION 12.(a) Chapter 136 of the General Statutes is amended by adding a new Article to read:

"Article 6I.

"Virginia-North Carolina Interstate Toll Road Compact.

"§ 136-89.200. Legislative findings.

(a) The General Assembly finds that the existing Interstate system is becoming increasingly congested and overburdened with traffic in many areas of the State; that the sharp surge of vehicle miles traveled is overwhelming the State's ability to build and pay for adequate road improvements; and that an adequate answer to this challenge will require the State to be innovative and utilize several new approaches to transportation improvements in North Carolina.

Toll funding of Interstate 95 highway and bridge construction is feasible in North Carolina and can contribute to addressing the critical transportation needs of the State. A toll program on I-95 can speed the implementation of needed transportation improvements by funding some projects with tolls.

(b) The Commonwealth of Virginia has enacted Chapter 917 of its 2006 Laws (Senate Bill 614) establishing the Virginia-North Carolina Interstate Toll Road Compact, contingent on similar action by the State of North Carolina.

"§ 136-89.201. Virginia-North Carolina Interstate Toll Road Compact; form of compact.

The Virginia-North Carolina Interstate Toll Road Compact is enacted into law and entered into with all other jurisdictions legally joining in the form substantially as follows:

Article I.

Short Title.

This shall be known and may be cited as the Virginia-North Carolina Interstate Toll Road Compact.

Article II.

Compact Established.

Pursuant to Public Law 109-59 (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), there is hereby established the Virginia-North Carolina Interstate Toll Road Compact (the Compact).

Article III.

Agreement.

The Commonwealth of Virginia and the State of North Carolina agree, upon adoption of this compact:

- (1) To set, impose, and collect tolls, not to exceed a maximum of five dollars (\$5.00) for a two-axle vehicle, for use of Interstate Route 95 within their respective boundaries;
- (2) To share the net proceeds from tolls collected evenly after deducting their actual and necessary costs of collection and operation, with each state's share of the proceeds to be used as the laws of that state may provide, subject to federal law; and
- (3) To coordinate efforts to establish welcome centers, rest areas, and facilities where travelers may obtain food, fuel, souvenirs, and vehicle repairs and service.

Article IV.

Compact Commission Established; Membership; Chairman; Meetings; and Report.

The Commonwealth of Virginia and the State of North Carolina shall each establish a compact commission. In Virginia, the Virginia-North Carolina Interstate Toll Road Compact Commission (the Commission) shall be established as a regional instrumentality and common agency of the Commonwealth of Virginia and the State of North Carolina. The compact commission of each state shall be empowered to carry out the purposes of the Compact.

The Compact Commission shall have a total membership of 10 legislative members, consisting of five legislative members representing the Commonwealth of Virginia and five legislative members representing the State of North Carolina. The Virginia members of the Commission shall be appointed as follows: two members of the Senate to be appointed by the Senate Committee on Rules, and three members of the House of Delegates to be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. The Virginia members of the Commission shall serve terms coincident with their terms of office, and may be reappointed. However, no Senate member shall serve more than two consecutive four-year terms, and no House member shall serve more than four consecutive two-year terms.

The North Carolina members of the Commission shall be appointed and may be removed in accordance with applicable statutes of the State of North Carolina, as appropriate.

The chairman of the Commission shall be elected by the members of the Commission from among its membership. The chairman shall serve for a term of one year. The chairmanship shall rotate between the Commonwealth of Virginia and the State of North Carolina.

The Commission shall meet not less than twice annually, and at least once in Virginia and once in North Carolina. The Commission shall issue an annual report of its activities to the Governors and the General Assembly of Virginia and the General Assembly of North Carolina.

Article V.Funding and Compensation.

The Commission may utilize for its operation and expenses funds appropriated to it for such purposes by the Virginia General Assembly and North Carolina General Assembly, or funds received from federal sources.

The Virginia members of the Commission shall receive such compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties to the Commission as provided in §§ 2.2-2813 and 2.2-2825. The North Carolina members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with applicable statutes of the State of North Carolina, as appropriate. However, all such compensation and expenses shall be paid from existing appropriations and funds provided to the Commission.

Article VI.Staff Support.

1 The Virginia Department of Transportation and the North Carolina Department of
2 Transportation shall provide staff support to the Commission.

3 **"§ 136-89.202. Commission established; appointment and terms of members;**
4 **chairman; reports; Commission funds; staff.**

5 (a) The Virginia-North Carolina Interstate Toll Road Compact Commission is
6 hereby established as a regional instrumentality and a common agency of the State of
7 North Carolina and the Commonwealth of Virginia, and may carry out the purposes of
8 the Compact, including establishing tolls as provided by this Article.

9 (b) The North Carolina members of the Commission shall be composed of five
10 members as follows: two members appointed by the General Assembly upon
11 recommendation of the President Pro Tempore of the Senate, two members appointed
12 by the General Assembly upon recommendation of the Speaker of the House of
13 Representatives, and one appointed by the Governor. One of the initial appointments
14 upon the recommendation of the President Pro Tempore of the Senate shall be for a
15 four-year term to begin July 1, 2008, and the other shall be for a two-year term to begin
16 July 1, 2008. One of the initial appointments upon the recommendation of the Speaker
17 of the House of Representatives shall be for a four-year term to begin July 1, 2008, and
18 the other shall be for a two-year term to begin July 1, 2008. The initial appointment by
19 the Governor shall be for a four-year term to begin July 1, 2008. The member appointed
20 by the Governor may be removed in the same manner as provided by G.S. 143B-13.
21 Members appointed by the General Assembly may be removed by the General
22 Assembly, or their offices vacated in accordance with G.S. 143B-13(b).

23 (c) North Carolina members of the Commission shall receive per diem,
24 subsistence, and travel allowances in accordance with Chapter 138 of the General
25 Statutes."

26 **SECTION 12.(b)** This section shall become effective upon its enactment by
27 the State of North Carolina and the Commonwealth of Virginia, and in accordance with
28 federal law authorizing this compact.

29 **SECTION 13.** Sections 1, 2 and 3 of this act become effective December 1,
30 2008. The remainder of this act is effective when it becomes law.

S.B. 1698
ID # 2313

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPRESS PERMITTING REVIEW PROGRAM FOR CONNECTIONS TO THE
STATE HIGHWAY SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE
TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Senator(s)

[Signature]
Jenkins

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING
MAY 21 2008
AND REFERRED TO COMMITTEE
on Commerce, Trade
& Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

1

SENATE BILL 1698*

Short Title: Express Permitting Review Program.

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPRESS PERMITTING REVIEW PROGRAM FOR CONNECTIONS TO THE STATE HIGHWAY SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-93.1. Express Review Program.

(a) The Department may develop a fee supported express review program in each highway division to provide express permit and certification reviews in order for an applicant to make a connection to the State highway system for a driveway, street, signal, drainage, or any other encroachment. The Department of Transportation may use contracted engineering firms supporting each highway division to provide express permit reviews, comments, and recommendations for issuing such express permits. Existing staff and resources allocated to a division may be used for an express permit review program, but no new staff shall be hired for the purposes of implementing an express permit review program. Highway division participation in the express review program is voluntary. Any highway division that implements an express permit review program shall ensure it is supported by the fees established pursuant to subsection (b) of this section. The express review program may be applied to any or all of the permits, approvals, or certifications provided in this subsection and shall be processed within 30 days of receipt of a complete permit application by the Department.

(b) The Department may determine the fees for an express application review under the express review program. The maximum permit application fee to be charged under this section for an express review of a project application requiring all of the permits under subsection (a) of this section shall not exceed four thousand dollars (\$4,000). The Department shall review and determine completeness of an application within 3 business days of receipt. If an express permit is not issued or denied within 30 days of

1 receipt of the complete permit application, the entire cost of the express permit will be
2 returned to the applicant. Notwithstanding Chapter 150B of the General Statutes, the
3 Department shall establish the procedure by which the amount of the fees under this
4 subsection are established and applied for an express review program permitted by this
5 section. All fee schedules shall be applicable to any divisions participating in an express
6 permit review program.

7 (c) No later than March 1 of each year, the Department shall report to the Fiscal
8 Research Division and the Joint Legislative Transportation Oversight Committee. The
9 report shall include the cost of administering the program in each division, the number
10 of express permits issued, the turnaround time for permits, the amount of fees collected
11 per division, and the method that divisions use to implement the program.

12 (d) All fees collected under this section shall be used to pay for the cost of
13 administering and implementing express review programs under this section. These
14 costs include the salaries of the program's staff and costs of contracted engineering
15 firms.

16 **SECTION 2.** This act becomes effective July 1, 2008.



SENATE BILL 1698: Express Permitting Review Program

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 10, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1698-CSRW-74[v.1]		Committee Counsel

SUMMARY: *Senate Bill 1698 would create an express permitting review program for connections to the State highway system, as recommended by the Joint Legislative Transportation Oversight Committee.*

[As introduced, this bill was identical to H2313, as introduced by Rep. Cole, which is currently in House Finance.]

BILL ANALYSIS: Senate Bill 1698 would require the Department of Transportation to create an express permitting review program for applications to make connections to the State highway system as follows:

- **DOT to Develop an Express Permitting Program** – DOT would be required to develop a fee supported express review program in each highway division, to provide express permit and certification reviews in order for an applicant to make a connection to the State highway system for a driveway, street, signal, drainage, or any other encroachment.
- **Voluntary Participation** – DOT highway division participation in the express permitting review program would be voluntary for those divisions that routinely review and issue permits within 45 days.
- **Time for Review** – DOT would be required to review and determine completeness of an application within 3 business days of receipt. If an express permit is not issued or denied within 30 days of receipt of the complete permit application, the entire cost of the express permit would have to be returned to the applicant. The permit application would then be forwarded to the Division Engineer who would be required to issue or deny the permit within 15 days.
- **Express Permitting Program Staff** – The bill would authorize DOT to use either contracted engineering firms, or existing staff, to support each highway division in providing the express permitting review program. DOT would not be authorized to hire new staff to implement the program.
- **Fees** – DOT would be authorized to determine the fees for an express application review, not to exceed \$4,000. The determination of the fee would not be subject to rulemaking procedures under Chapter 150B of the General Statutes.
- **Use of Fees** – All fees collected for express application reviews would be used to pay for the cost of administering and implementing the program.
- **Reports** – No later than March 1 of each year, DOT would be required to report to the Fiscal Research Division and the Joint Legislative Transportation Oversight Committee on the program.

Senate Bill 1698

Page 2

EFFECTIVE DATE: The act would become effective July 1, 2008.

Giles Perry, counsel to the House Transportation Committee, substantially contributed to this summary.

SI698e1-SMSU-CSRW-74v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

S

D

SENATE BILL 1698*

PROPOSED COMMITTEE SUBSTITUTE S1698-CSRW-74 [v.1]

5/29/2008 10:34:17 AM

Short Title: Express Permitting Review Program.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXPRESS PERMITTING REVIEW PROGRAM FOR CONNECTIONS TO THE STATE HIGHWAY SYSTEM, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-93.1. Express Permit Review Program.

(a) Program created. – The Department shall develop a fee-supported express permit review program in each highway division. The program shall provide express permit and certification reviews, in order for an applicant to make a connection to the State highway system for a driveway, street, signal, drainage, or any other encroachment. The express permit review program may be applied to any or all of the permits, approvals, or certifications listed in this subsection.

(b) Highway division implementation. – Individual highway division participation in the express review program is voluntary if all special commercial permits are routinely reviewed and issued within 45 days in that division. Any highway division that implements an express permit review program shall ensure it is supported by the fees established pursuant to subsection (e) of this section.

(c) Time limits for review. – The Department shall review and determine completeness of an express permit application within 3 business days of receipt of an application. The Department shall review and process a complete express permit application within 30 days of receipt. If an express permit is not issued or denied within 30 days of receipt of the complete permit application, the entire cost of the express permit shall be returned to the applicant, and the permit application forwarded to the respective Division Engineer, who shall issue or deny the permit within 15 days of receipt.

1
2 (d) Staff for program. – The Department of Transportation may use contracted
3 engineering firms supporting each highway division to provide express permit reviews,
4 comments, and recommendations for issuing express permits. Existing Department staff
5 and resources allocated to a division may be used for an express permit review program,
6 but no new staff shall be hired for the purposes of implementing an express permit
7 review program.

8 (e) Fees. – The Department may determine the fees for an express application
9 review under the express review program. The maximum permit application fee to be
10 charged under this section for an express review of a project application requiring all of
11 the permits listed under subsection (a) of this section shall not exceed four thousand
12 dollars (\$4,000). Notwithstanding Chapter 150B of the General Statutes, the
13 Department shall establish the procedure by which the amount of the fees under this
14 subsection are established and applied for an express review program permitted by this
15 section. The fee schedule established by the Department shall be applicable to all
16 divisions participating in an express permit review program.

17 (f) Use of fees. – All fees collected under this section shall be used to fund the
18 cost of administering and implementing express permit review programs created under
19 this section. These costs include the salaries of the program's staff and costs of
20 contracted engineering firms.

21 (g) Reports. – No later than March 1 of each year, the Department shall report to
22 the Fiscal Research Division and the Joint Legislative Transportation Oversight
23 Committee on the express permitting review program. The report shall include the cost
24 of administering the program in each division, the number of express permits issued, the
25 turnaround time for permits, the amount of fees collected per division, and the method
26 that divisions use to implement the program."

27 **SECTION 2.** This act becomes effective July 1, 2008.

A BILL TO BE ENTITLED

Introduced by Senator(s)

~~Jenkins~~

Principal Clerk's Use Only

FILED MAY 20 2008

PASSED 1st READING

MAY 21 2008

REFERRED TO COMMITTEE

OF Commerce & Hall

Business & Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 1797*

Short Title: State Tire Contract.

(Public)

Sponsors: Senator Jenkins.

Referred to: Commerce, Small Business and Entrepreneurship.

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDY OF
TIRE RETREAD PROCESSES, AS RECOMMENDED BY THE COMMITTEE.

The General Assembly of North Carolina enacts:

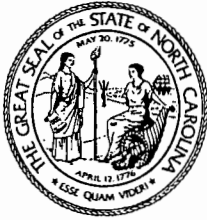
SECTION 1. The North Carolina Department of Administration, Division
of Purchase and Contract, is directed to make the following changes to its Request for
Proposal criteria for a statewide tire retread contract:

- (1) Require that the bids remain closed until a designated and advertised
bid-opening day in which the bids are opened, announced, and
recorded in public. The bids shall then be shown and made available to
the public.
- (2) Do not require a specific type of retread method, such as a bead to
bead or precure product.
- (3) Require that manufacturing company's original markings on tires be
visible and not removed during the retread process.
- (4) Require that the cost of the tire retread include spot repairs, and that
there no longer be a separate charge for a spot repair.
- (5) Include in the contract that all casings receive a state-of-the-art
inspection with the use of shearography, ultrasound, electrostatic
discharge, or other industry standard pressure testing methodology.
- (6) Include a threshold for the number of times a casing may be retreaded.
- (7) Include a threshold for the age of a casing that may be retreaded.
- (8) Include the number of nail hole repairs that are permissible for a
casing to be retreaded.
- (9) Provide assurance that a particular fleet will receive its own casings
back after retread completed.
- (10) Set minimum tread depths per category or application of the retread
tire.

1 (11) Consider a multiaward contract structure that includes several vendors;
2 the Office of Purchase and Contract will take into account geographic
3 location and proximity of vendor to customer when creating a
4 multiaward contract.

5 (12) Allow State agencies to purchase up to ten percent (10%) of tires off
6 the State contract.

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



SENATE BILL 1797: State Tire Contract

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 10, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1797-CSSU-71[v.2]		Committee Counsel

SUMMARY: *Senate Bill 1797 would direct the North Carolina Division of Purchase and Contract to make specified changes to its Request for Proposal criteria for a statewide tire retread contract. The changes are recommendations of the Joint Legislative Transportation Oversight Committee following a study of tire retread processes.*

[As introduced, this bill was identical to H2309, as introduced by Rep. Cole, which is currently in House Ways and Means, if favorable, Transportation.]

BILL ANALYSIS: Senate Bill 1797 would direct the Division of Purchase and Contract to make the following changes to its Request for Proposal criteria for a statewide tire retread contract:

- Require bids remain closed until a designated bid-opening day, when they are opened publicly and made available.
- No longer allow separate charges for spot repairs.
- Contract to specify that all casings receive a state-of-the-art inspection.
- Include threshold for number of times a casing may be retreaded.
- Include threshold for age of casing that may be retreaded.
- Include number of nail hole repairs permissible for casing to be retreaded.
- Require assurance that a fleet will receive its own casings back after retreading.
- Set minimum tread depths.
- Consider a multiaward contract structure with several vendors.
- Allow State agencies to purchase up to 10% of tires off the State contract.

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

S1797e1-SMSU-CSSU-71v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE BILL 1797*
PROPOSED COMMITTEE SUBSTITUTE S1797-CSSU-71 [v.2]

6/9/2008 6:50:42 PM

Short Title: State Tire Contract.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED
AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDY OF
TIRE RETREAD PROCESSES, AS RECOMMENDED BY THE COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. The North Carolina of Department of Administration, Division
of Purchase and Contract, is directed to make the following changes to its Request for
Proposal criteria for a statewide tire retread contract:

- (1) Require that the bids remain closed until a designated and advertised
bid-opening day in which the bids are opened, announced, and
recorded in public. The bids shall then be shown and made available to
the public.
- (2) Require that the cost of the tire retread include spot repairs, and that
there no longer be a separate charge for a spot repair.
- (3) Include in the contract that all casings receive a state-of-the-art
inspection with the use of shearography, ultrasound, electrostatic
discharge, high pressure testing, or other industry standard testing
methodology.
- (4) Include a threshold for the number of times a casing may be retreaded.
- (5) Include a threshold for the age of a casing that may be retreaded.
- (6) Include the number of nail hole repairs that are permissible for a
casing to be retreaded.
- (7) Provide assurance that a particular fleet will receive its own casings
back after retread completed.
- (8) Set minimum tread depths per category or application of the retread
tire.
- (9) Consider a multiaward contract structure that includes several vendors;
the Office of Purchase and Contract will take into account geographic

1 location, proximity of vendor to customer, and the needs of the users
2 when creating a multiaward contract.

- 3 (10) Allow State agencies to purchase up to ten percent (10%) of tires off
4 the State contract.

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

S.B.

1891

SESSION LAW _____

ID # 2487

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

Introduced by Senator(s)

Bingham

Purcell

Edwards

[Signature]

[Signature]

[Signature]

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[Signature]

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Principal Clerk's Use Only

FILED MAY 21 2008

PASSED 1st READING

MAY 22 2008

AND REFERRED TO COMMITTEE

Transp.

**WITH UNANIMOUS CONSENT
DRAWN FROM**

JUN 5 2008

RE-REFERRED TO

Transp.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 1891*

Short Title: Change Format of Drivers Licenses/Under 21. (Public)

Sponsors: Senators Bingham, Purcell; Allran, Dorsett, Garrou, Jenkins, Jones, Malone, McKissick, and Swindell.

Referred to: Transportation.

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

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

"(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

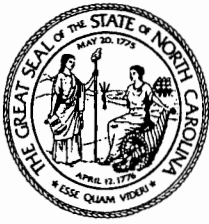
- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the

1 photograph would violate the license holder's religious convictions. In taking
2 photographs of license holders, the Division must distinguish between license holders
3 who are less than 21 years old and license holders who are at least 21 years old by using
4 different color backgrounds or borders for each group. The Division shall determine the
5 different colors to be used. The Commissioner shall ensure that applicants 21 years old
6 or older are issued drivers licenses and special identification cards that are printed in a
7 horizontal format. The Commissioner shall ensure that applicants under the age of 21
8 are issued drivers licenses and special identification cards that are printed in a vertical
9 format, that distinguishes them from the horizontal format, for ease of identification of
10 individuals under age 21 by members of industries that regulate controlled products that
11 are sale restricted by age and law enforcement officers enforcing these laws.

12 At the request of an applicant for a drivers license, a license issued to the applicant
13 must contain the applicant's race."

14 **SECTION 2.** This act becomes effective October 1, 2008.



SENATE BILL 1891: Change Format of Drivers Licenses/Under 21

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 10, 2008
Introduced by:	Sen. Bingham	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition S1891-CSSU-76[v.1]		Committee Counsel

SUMMARY: *Senate Bill 1891 would require the Division of Motor Vehicles to issue drivers licenses and special identification cards in a vertical format, instead of the current horizontal format, to persons under the age of 21 in order to make them more easily identifiable.*

[As introduced, this bill was identical to H2487, as introduced by Reps. Folwell, Pierce, McElraft, Faison, which is currently in House Appropriations.]

CURRENT LAW: Under G.S. 20-7(n), the format of a drivers license for a person under the age of 21 is the same as for a person 21 or older, except that it is to be distinguished by a different color background or border, as determined by the Division of Motor Vehicles. Under G.S. 20-37.7(c), the format of a special identification card issued to an applicant is to be similar in size, shape, and design to a drivers license, and it must have the same background color that a drivers license issued to the applicant would have. Drivers licenses and special identification cards are currently issued by the Division in a horizontal format.

BILL ANALYSIS: Senate Bill 1891 would require the Division to issue drivers licenses and special identification cards in a horizontal format for applicants 21 years of age and older, and in a vertical format for applicants under the age of 21. The stated intent would be to make it easier for those selling products that are sale restricted by age, and law enforcement officers, to identify underage persons.

EFFECTIVE DATE: The bill would become effective October 1, 2008, and would apply to drivers licenses and special identification cards issued or renewed on or after that date.

BACKGROUND: This bill is a recommendation of the Child Fatality Task Force.

S1891e1-SMSU-CSSU-76v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1891*
PROPOSED COMMITTEE SUBSTITUTE S1891-CSSU-76 [v.1]

6/9/2008 3:55:15 PM

Short Title: Change Format of Drivers Licenses/Under 21.

(Public)

Sponsors:

Referred to:

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

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

"(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the

1 photograph would violate the license holder's religious convictions. In taking
2 photographs of license holders, the Division must distinguish between license holders
3 who are less than 21 years old and license holders who are at least 21 years old by using
4 different color backgrounds or borders for each group. The Division shall determine the
5 different colors to be used. The Commissioner shall ensure that applicants 21 years old
6 or older are issued drivers licenses and special identification cards that are printed in a
7 horizontal format. The Commissioner shall ensure that applicants under the age of 21
8 are issued drivers licenses and special identification cards that are printed in a vertical
9 format, that distinguishes them from the horizontal format, for ease of identification of
10 individuals under age 21 by members of industries that regulate controlled products that
11 are sale restricted by age and law enforcement officers enforcing these laws.

12 At the request of an applicant for a drivers license, a license issued to the applicant
13 must contain the applicant's race."

14 **SECTION 2.** This act becomes effective October 1, 2008, and applies to
15 drivers licenses and special identification cards issued or renewed on or after that date.

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship

June 10, 2008

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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FIRM OR AGENCY AND ADDRESS

Reed Simons	NCTA
DAVID JOYNER	NCTA
SAM POOLE	Wood & Smith
Walter H. Hester	CHPA
W. WOODWARD	AP
Henny Hutan	N.P.B.A.
Ram Hunt	STI
Leslie Arnold	SOG-Daily Bulletin
Katherine Joyce	NCA SA
Charles Francis	Sen Bingham's office
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship

June 10, 2008

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Tracy Kimbrell	Parker Poe
Scott Cranon	Duke Energy
Tyler Mulligan	UNC SOG
Christine Wunsche	SOG - Daily Bulletin
Larry G. L.	NCBA
Scott Mason	Lowe's
Elizabeth Dalton	NCRMA
Andy Ellen	NCRMA
PEV MOWNEW	NC DPI
Derek Graham	DPI
Gregg Wanner	DPI

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship

June 10, 2008

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FIRM OR AGENCY AND ADDRESS

<i>Lat Nylor</i>	<i>FL Zurich</i>
<i>Butch Gannell</i>	<i>NC Bar Assoc.</i>
<i>Paul Hylton</i>	<i>Tyler, Inc.</i>
<i>Dean Meyer</i>	<i>NCTA</i>
<i>Carolyn Johnson</i>	<i>NCTA</i>
<i>Michelle Frasier</i>	<i>MFS</i>
<i>W. David Ambrose</i>	<i>Elect. Cities S.N.C. LLC</i>
<i>Cliff Venable</i>	<i>Car. Office</i>
<i>Hilary Cooper</i>	<i>Payner & Sprill</i>
<i>Mer Mendenhall</i>	<i>Payner & Sprill</i>
<i>Pam Fogelman</i>	<i>POYNER + SPRILL</i>

RALPH EDELBERG

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Jim WESTBROOK

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Drew Harbison

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Mark Walker

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Selma Childs

CFTF

Stephanie Nault

YALC/DOA

Tom Vitzgum

CFTF

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship

June 10, 2008

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

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W. Chonelly	NC ALE
Pat Taylor	AAALE
Claire Hunter	MWC
Robert Paschal	Young, Moore
Russ Dubiskey	ITNC
Richard Howard	DMV
Mike Salisbury	DMV
Ed Gunkle	BRMHC
Andy Mann	REBIC
Lisa Martin	NC HBA
Jessica Hayes	NC HBA

VISITOR REGISTRATION SHEET

Commerce, Small Business and Entrepreneurship

June 10, 2008

Name of Committee**Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Marc Linleyson

Highway 17 Association

CSA 113

KCC

Daniel Rasmussen

KENNEDY Lovington

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	June 24, 2008	11:00 AM	LB 1027

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 738	Custodial Agreements & Clearing Corp. Act.-AB	Representative Goforth Representative Holliman
SB 1924	Require Carbon Monoxide Detectors.	Senator Purcell
SB 1946	Codify Energy Efficiency in Public Buildings.	Senator Cowell
HB 1489	Protect Consumers/Life Settlement Transaction.	Representative Holliman

Senator R. C. Soles, Jr., Chair

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, June 24, 2008, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 738	Custodial Agreements & Clearing Corp. Act.-AB	Representative Goforth Representative Holliman
SB 1924	Require Carbon Monoxide Detectors.	Senator Purcell
SB 1946	Codify Energy Efficiency in Public Buildings.	Senator Cowell
HB 1489	Protect Consumers/Life Settlement Transaction.	Representative Holliman

Presentations

Other Business

Adjournment

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, June 24, 2008

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

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

S.B.	1924	Require Carbon Monoxide Detectors.	
		Draft Number:	PCS 85484
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

S.B.	1946	Codify Energy Efficiency in Public Buildings.	
		Draft Number:	PCS 75590
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

PUBLIC BILL

S.B. 1924

SESSION LAW _____

JS H 2471

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA BUILDING CODE COUNCIL TO ADOPT PROVISIONS IN THE BUILDING CODE PERTAINING TO THE INSTALLATION OF CARBON MONOXIDE DETECTORS IN CERTAIN SINGLE-FAMILY OR MULTIFAMILY DWELLINGS; TO REQUIRE THE INSTALLATION OF OPERATIONAL CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL RENTAL PROPERTY AND TO PROVIDE FOR MUTUAL OBLIGATIONS BETWEEN LANDLORDS AND TENANTS REGARDING THE INSTALLATION AND UPKEEP OF CARBON MONOXIDE DETECTORS, AS RECOMMENDED BY THE NORTH CAROLINA CHILD FATALITY TASK FORCE.

Introduced by Senator(s)

Purcell

Purcell

Principal Clerk's Use Only

FILED MAY 21 2008

PASSED 1st READING

MAY 22 2008

AND REFERRED TO COMMITTEE

ON *Commerce, Small,
+ Entrepreneurship*

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1924*

Short Title: Require Carbon Monoxide Detectors.

(Public)

Sponsors: Senator Purcell.

Referred to: Commerce, Small Business and Entrepreneurship.

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA BUILDING CODE COUNCIL TO ADOPT PROVISIONS IN THE BUILDING CODE PERTAINING TO THE INSTALLATION OF CARBON MONOXIDE DETECTORS IN CERTAIN SINGLE-FAMILY OR MULTIFAMILY DWELLINGS; TO REQUIRE THE INSTALLATION OF OPERATIONAL CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL RENTAL PROPERTY AND TO PROVIDE FOR MUTUAL OBLIGATIONS BETWEEN LANDLORDS AND TENANTS REGARDING THE INSTALLATION AND UPKEEP OF CARBON MONOXIDE DETECTORS, AS RECOMMENDED BY THE NORTH CAROLINA CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

In addition, the Code may regulate activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion, or related hazards. Such fire

1 prevention code provisions shall be considered the minimum standards necessary to
2 preserve and protect public health and safety, subject to approval by the Council of
3 more stringent provisions proposed by a municipality or county as provided in
4 G.S. 143-138(e). These provisions may include regulations requiring the installation of
5 either battery-operated or electrical smoke detectors in every dwelling unit used as
6 rental property, regardless of the date of construction of the rental property. For
7 dwelling units used as rental property constructed prior to 1975, smoke detectors shall
8 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing
9 laboratory approval, and shall be installed in accordance with either the standard of the
10 National Fire Protection Association or the minimum protection designated in the
11 manufacturer's instructions, which the property owner shall retain or provide as proof of
12 compliance.

13 The Code may contain provisions requiring the installation of either battery-operated
14 or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel
15 burning heater or appliance, fireplace, or an attached garage, regardless of the date of
16 construction of the dwelling unit. Carbon monoxide detectors shall be those listed by a
17 nationally recognized testing laboratory that is OSHA-approved to test and certify to
18 American National Standards Institute/Underwriters Laboratories Standards
19 ANSI/UL2034 or ANSI/US2075 and shall be installed in accordance with either the
20 standard of the National Fire Protection Association or the minimum protection
21 designated in the manufacturer's instructions, which the property owner shall retain or
22 provide as proof of compliance. A carbon monoxide detector may be combined with
23 smoke detectors if the combined detector does both of the following: (i) complies with
24 ANSI/UL2034 for carbon monoxide alarms and ANSI/UL217 for smoke detectors; and
25 (ii) emits an alarm in a manner that clearly differentiates between detecting the presence
26 of carbon monoxide and the presence of smoke.

27 The Code may contain provisions regulating every type of building or structure,
28 wherever it might be situated in the State.

29 Provided further, that nothing in this Article shall be construed to make any building
30 rules applicable to farm buildings located outside the building-rules jurisdiction of any
31 municipality.

32 Provided further, that no building permit shall be required under the Code or any
33 local variance thereof approved under subsection (e) for any construction, installation,
34 repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any
35 single family residence or farm building unless the work involves: the addition, repair,
36 or replacement of load bearing structures; the addition (excluding replacement of same
37 size and capacity) or change in the design of plumbing; the addition, replacement or
38 change in the design of heating, air conditioning, or electrical wiring, devices,
39 appliances, or equipment, the use of materials not permitted by the North Carolina
40 Uniform Residential Building Code; or the addition (excluding replacement of like
41 grade of fire resistance) of roofing.

42 Provided further, that no building permit shall be required under such Code from any
43 State agency for the construction of any building or structure, the total cost of which is
44 less than twenty thousand dollars (\$20,000), except public or institutional buildings.

1 For the information of users thereof, the Code shall include as appendices [the
2 following:]

- 3 (1) Any rules governing boilers adopted by the Board of Boiler and
4 Pressure Vessels Rules,
- 5 (2) Any rules relating to the safe operation of elevators adopted by the
6 Commissioner of Labor, and
- 7 (3) Any rules relating to sanitation adopted by the Commission for Public
8 Health which the Building Code Council believes pertinent.

9 In addition, the Code may include references to such other rules of special types,
10 such as those of the Medical Care Commission and the Department of Public Instruction
11 as may be useful to persons using the Code. No rule issued by any agency other than the
12 Building Code Council shall be construed as a part of the Code, nor supersede that
13 Code, it being intended that they be presented with the Code for information only.

14 Nothing in this Article shall extend to or be construed as being applicable to the
15 regulation of the design, construction, location, installation, or operation of (1)
16 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases
17 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied
18 petroleum gas from the outlet of the first stage pressure regulator to and including each
19 liquefied petroleum gas utilization device within a building or structure covered by the
20 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined
21 in G.S. 62-3, or an electric or telephone membership corporation, including without
22 limitation poles, towers, and other structures supporting electric or communication
23 lines.

24 Nothing in this Article shall extend to or be construed as being applicable to the
25 regulation of the design, construction, location, installation, or operation of industrial
26 machinery. However, if during the building code inspection process, an electrical
27 inspector has any concerns about the electrical safety of a piece of industrial machinery,
28 the electrical inspector may refer that concern to the Occupational Safety and Health
29 Division in the North Carolina Department of Labor but shall not withhold the
30 certificate of occupancy nor mandate third-party testing of the industrial machinery
31 based solely on this concern. For the purposes of this paragraph, "industrial machinery"
32 means equipment and machinery used in a system of operations for the explicit purpose
33 of producing a product. The term does not include equipment that is permanently
34 attached to or a component part of a building and related to general building services
35 such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and
36 general electrical transmission.

37 In addition, the Code may contain rules concerning minimum efficiency
38 requirements for replacement water heaters, which shall consider reasonable availability
39 from manufacturers to meet installation space requirements and may contain rules
40 concerning energy efficiency that require all hot water plumbing pipes that are larger
41 than one-fourth of an inch to be insulated.

42 No State, county, or local building code or regulation shall prohibit the use of special
43 locking mechanisms for seclusion rooms in the public schools approved under
44 G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be

constructed so that it will engage only when a key, knob, handle, button, or other similar device is being held in position by a person, and provided further that, if the mechanism is electrically or electronically controlled, it automatically disengages when the building's fire alarm is activated. Upon release of the locking mechanism by a supervising adult, the door must be able to be opened readily."

SECTION 2. G.S. 42-42(a) is amended by adding the following new subdivision to read:

"(a) The landlord shall:

...

(7) Provide operable carbon monoxide detectors, either battery-operated or electrical, having an Underwriters Laboratories, Inc., listing or other equivalent national testing laboratory approval, and install the carbon monoxide detectors in accordance with either the standards of the National Fire Protection Association or the minimum protection designated in the manufacturer's instructions, which the landlord shall retain or provide as proof of compliance. The landlord shall replace or repair the carbon monoxide detectors within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a carbon monoxide detector is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated carbon monoxide detector at the beginning of a tenancy, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered as negligence on the part of the tenant or the landlord. This subdivision applies only to dwelling units having a fossil-fuel burning heater or appliance, fireplace, or an attached garage.

...."

SECTION 3. G.S. 42-43(a)(4) and (a)(7) read as rewritten:

"§ 42-43. **Tenant to maintain dwelling unit.**

(a) The tenant shall:

...

(4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector or carbon monoxide detector provided by the landlord, or knowingly permit any person to do so.

...

(7) Notify the landlord, in writing, of the need for replacement of or repairs to a smoke ~~detector~~-detector or carbon monoxide detector. The landlord shall ensure that a smoke detector ~~is and~~ carbon monoxide detector are operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement

1 to the contrary, the landlord shall place new batteries in a
2 battery-operated smoke detector and battery-operated carbon
3 monoxide detector at the beginning of a tenancy and the tenant shall
4 replace the batteries as needed during the tenancy. Failure of the tenant
5 to replace the batteries as needed shall not be considered as negligence
6 on the part of the tenant or the landlord."

7 **SECTION 4.** The amendment to G.S. 143-138(b) contained in Section 1 of
8 this act shall not be construed to imply that the Building Code Council not possess the
9 authority contained in that amendment prior to the effective date of Section 1 of this act.

10 **SECTION 5.** Sections 2 and 3 of this act become effective January 1, 2009,
11 and apply to residential rental agreements in effect on and after that date. The
12 remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1924*
PROPOSED COMMITTEE SUBSTITUTE S1924-CSTB-20 [v.8]

6/23/2008 2:18:16 PM

Short Title: Require Carbon Monoxide Detectors.

(Public)

Sponsors:

Referred to:

May 22, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE NORTH CAROLINA BUILDING CODE COUNCIL TO STUDY AND ADOPT PROVISIONS IN THE BUILDING CODE PERTAINING TO THE INSTALLATION OF CARBON MONOXIDE DETECTORS IN CERTAIN SINGLE-FAMILY OR MULTIFAMILY DWELLINGS; TO REQUIRE THE INSTALLATION OF OPERATIONAL CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL RENTAL PROPERTY; TO PROVIDE FOR MUTUAL OBLIGATIONS BETWEEN LANDLORDS AND TENANTS REGARDING THE INSTALLATION AND UPKEEP OF CARBON MONOXIDE DETECTORS; AND TO MAKE CONFORMING CHANGES, AS RECOMMENDED BY THE NORTH CAROLINA CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-138(b) reads as rewritten:

"(b) Contents of the Code. – The North Carolina State Building Code, as adopted by the Building Code Council, may include reasonable and suitable classifications of buildings and structures, both as to use and occupancy; general building restrictions as to location, height, and floor areas; rules for the lighting and ventilation of buildings and structures; requirements concerning means of egress from buildings and structures; requirements concerning means of ingress in buildings and structures; rules governing construction and precautions to be taken during construction; rules as to permissible materials, loads, and stresses; rules governing chimneys, heating appliances, elevators, and other facilities connected with the buildings and structures; rules governing plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering of temperature, and electrical systems; and such other reasonable rules pertaining to the construction of buildings and structures and the installation of particular facilities therein as may be found reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large.

1 In addition, the Code may regulate activities and conditions in buildings, structures,
2 and premises that pose dangers of fire, explosion, or related hazards. Such fire
3 prevention code provisions shall be considered the minimum standards necessary to
4 preserve and protect public health and safety, subject to approval by the Council of
5 more stringent provisions proposed by a municipality or county as provided in
6 G.S. 143-138(e). These provisions may include regulations requiring the installation of
7 either battery-operated or electrical smoke detectors in every dwelling unit used as
8 rental property, regardless of the date of construction of the rental property. For
9 dwelling units used as rental property constructed prior to 1975, smoke detectors shall
10 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing
11 laboratory approval, and shall be installed in accordance with either the standard of the
12 National Fire Protection Association or the minimum protection designated in the
13 manufacturer's instructions, which the property owner shall retain or provide as proof of
14 compliance.

15 The Code may contain provisions requiring the installation of either battery-operated
16 or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel
17 burning heater or appliance, fireplace, or an attached garage, regardless of the date of
18 construction of the dwelling unit. Carbon monoxide detectors shall be those listed by a
19 nationally recognized testing laboratory that is OSHA-approved to test and certify to
20 American National Standards Institute/Underwriters Laboratories Standards
21 ANSI/UL2034 or ANSI/UL2075 and shall be installed in accordance with either the
22 standard of the National Fire Protection Association or the minimum protection
23 designated in the manufacturer's instructions, which the property owner shall retain or
24 provide as proof of compliance. A carbon monoxide detector may be combined with
25 smoke detectors if the combined detector does both of the following: (i) complies with
26 ANSI/UL2034 or ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for
27 smoke detectors; and (ii) emits an alarm in a manner that clearly differentiates between
28 detecting the presence of carbon monoxide and the presence of smoke.

29 The Code may contain provisions regulating every type of building or structure,
30 wherever it might be situated in the State.

31 Provided further, that nothing in this Article shall be construed to make any building
32 rules applicable to farm buildings located outside the building-rules jurisdiction of any
33 municipality.

34 Provided further, that no building permit shall be required under the Code or any
35 local variance thereof approved under subsection (e) for any construction, installation,
36 repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any
37 single family residence or farm building unless the work involves: the addition, repair,
38 or replacement of load bearing structures; the addition (excluding replacement of same
39 size and capacity) or change in the design of plumbing; the addition, replacement or
40 change in the design of heating, air conditioning, or electrical wiring, devices,
41 appliances, or equipment, the use of materials not permitted by the North Carolina
42 Uniform Residential Building Code; or the addition (excluding replacement of like
43 grade of fire resistance) of roofing.

1 Provided further, that no building permit shall be required under such Code from any
2 State agency for the construction of any building or structure, the total cost of which is
3 less than twenty thousand dollars (\$20,000), except public or institutional buildings.

4 For the information of users thereof, the Code shall include as appendices [the
5 following:]

6 (1) Any rules governing boilers adopted by the Board of Boiler and
7 Pressure Vessels Rules,

8 (2) Any rules relating to the safe operation of elevators adopted by the
9 Commissioner of Labor, and

10 (3) Any rules relating to sanitation adopted by the Commission for Public
11 Health which the Building Code Council believes pertinent.

12 In addition, the Code may include references to such other rules of special types,
13 such as those of the Medical Care Commission and the Department of Public Instruction
14 as may be useful to persons using the Code. No rule issued by any agency other than the
15 Building Code Council shall be construed as a part of the Code, nor supersede that
16 Code, it being intended that they be presented with the Code for information only.

17 Nothing in this Article shall extend to or be construed as being applicable to the
18 regulation of the design, construction, location, installation, or operation of (1)
19 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases
20 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied
21 petroleum gas from the outlet of the first stage pressure regulator to and including each
22 liquefied petroleum gas utilization device within a building or structure covered by the
23 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined
24 in G.S. 62-3, or an electric or telephone membership corporation, including without
25 limitation poles, towers, and other structures supporting electric or communication
26 lines.

27 Nothing in this Article shall extend to or be construed as being applicable to the
28 regulation of the design, construction, location, installation, or operation of industrial
29 machinery. However, if during the building code inspection process, an electrical
30 inspector has any concerns about the electrical safety of a piece of industrial machinery,
31 the electrical inspector may refer that concern to the Occupational Safety and Health
32 Division in the North Carolina Department of Labor but shall not withhold the
33 certificate of occupancy nor mandate third-party testing of the industrial machinery
34 based solely on this concern. For the purposes of this paragraph, "industrial machinery"
35 means equipment and machinery used in a system of operations for the explicit purpose
36 of producing a product. The term does not include equipment that is permanently
37 attached to or a component part of a building and related to general building services
38 such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and
39 general electrical transmission.

40 In addition, the Code may contain rules concerning minimum efficiency
41 requirements for replacement water heaters, which shall consider reasonable availability
42 from manufacturers to meet installation space requirements and may contain rules
43 concerning energy efficiency that require all hot water plumbing pipes that are larger
44 than one-fourth of an inch to be insulated.

1 No State, county, or local building code or regulation shall prohibit the use of special
2 locking mechanisms for seclusion rooms in the public schools approved under
3 G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be
4 constructed so that it will engage only when a key, knob, handle, button, or other similar
5 device is being held in position by a person, and provided further that, if the mechanism
6 is electrically or electronically controlled, it automatically disengages when the
7 building's fire alarm is activated. Upon release of the locking mechanism by a
8 supervising adult, the door must be able to be opened readily."

9 **SECTION 2.** G.S. 42-42(a) is amended by adding the following new
10 subdivision to read:

11 "(a) The landlord shall:

12 ...

13 (7) Provide a minimum of one operable carbon monoxide detector per
14 rental unit per level, either battery-operated or electrical, that is listed
15 by a nationally recognized testing laboratory that is OSHA-approved
16 to test and certify to American National Standards
17 Institute/Underwriters Laboratories Standards ANSI/UL2034 or
18 ANSI/UL2075, and install the carbon monoxide detectors in
19 accordance with either the standards of the National Fire Protection
20 Association or the minimum protection designated in the
21 manufacturer's instructions, which the landlord shall retain or provide
22 as proof of compliance. A landlord that installs one carbon monoxide
23 detector per rental unit per level shall be deemed to be in compliance
24 with standards under this subdivision covering the location and
25 number of detectors. The landlord shall replace or repair the carbon
26 monoxide detectors within 15 days of receipt of notification if the
27 landlord is notified of needed replacement or repairs in writing by the
28 tenant. The landlord shall ensure that a carbon monoxide detector is
29 operable and in good repair at the beginning of each tenancy. Unless
30 the landlord and the tenant have a written agreement to the contrary,
31 the landlord shall place new batteries in a battery-operated carbon
32 monoxide detector at the beginning of a tenancy, and the tenant shall
33 replace the batteries as needed during the tenancy. Failure of the tenant
34 to replace the batteries as needed shall not be considered as negligence
35 on the part of the tenant or the landlord. A carbon monoxide detector
36 may be combined with smoke detectors if the combined detector does
37 both of the following: (i) complies with ANSI/UL2034 or
38 ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for
39 smoke detectors; and (ii) emits an alarm in a manner that clearly
40 differentiates between detecting the presence of carbon monoxide and
41 the presence of smoke. This subdivision applies only to dwelling units
42 having a fossil-fuel burning heater or appliance, fireplace, or an
43 attached garage.

44"

1 **SECTION 3.** G.S. 42-43(a)(4) and (a)(7) read as rewritten:

2 **"§ 42-43. Tenant to maintain dwelling unit.**

3 (a) The tenant shall:

4 ...
5 (4) Not deliberately or negligently destroy, deface, damage, or remove any
6 part of the premises, nor render inoperable the smoke detector or
7 carbon monoxide detector provided by the landlord, or knowingly
8 permit any person to do so.

9 ...
10 (7) Notify the landlord, in writing, of the need for replacement of or
11 repairs to a smoke ~~detector~~-detector or carbon monoxide detector. The
12 landlord shall ensure that a smoke detector ~~is~~-and carbon monoxide
13 detector are operable and in good repair at the beginning of each
14 tenancy. Unless the landlord and the tenant have a written agreement
15 to the contrary, the landlord shall place new batteries in a
16 battery-operated smoke detector and battery-operated carbon
17 monoxide detector at the beginning of a tenancy and the tenant shall
18 replace the batteries as needed during the tenancy. Failure of the tenant
19 to replace the batteries as needed shall not be considered as negligence
20 on the part of the tenant or the landlord."

21 **SECTION 4.** G.S. 42-44 reads as rewritten:

22 **"§ 42-44. General remedies, penalties, and limitations.**

23 (a) Any right or obligation declared by this Chapter is enforceable by civil
24 action, in addition to other remedies of law and in equity.

25 (a1) If a landlord fails to provide, install, replace, or repair a smoke detector under
26 the provisions of G.S. 42-42(a)(5) or a carbon monoxide detector under the provisions
27 of G.S. 42-42(a)(7) within 30 days of having received written notice from the tenant or
28 any agent of State or local government of the landlord's failure to do so, the landlord
29 shall be responsible for an infraction and shall be subject to a fine of not more than two
30 hundred fifty dollars (\$250.00) for each violation. The landlord may temporarily
31 disconnect a smoke detector or carbon monoxide detector in a dwelling unit or common
32 area for construction or rehabilitation activities when such activities are likely to
33 activate the smoke detector or carbon monoxide detector or make it inactive.

34 (a2) If a smoke detector or carbon monoxide detector is disabled or damaged,
35 other than through actions of the landlord, the landlord's agents, or acts of God, the
36 tenant shall reimburse the landlord the reasonable and actual cost for repairing or
37 replacing the smoke detector or carbon monoxide detector within 30 days of having
38 received written notice from the landlord or any agent of State or local government of
39 the need for the tenant to make such reimbursement. If the tenant fails to make
40 reimbursement within 30 days, the tenant shall be responsible for an infraction and
41 subject to a fine of not more than one hundred dollars (\$100.00) for each violation. The
42 tenant may temporarily disconnect a smoke detector or carbon monoxide detector in a
43 dwelling unit to replace the batteries or when it has been inadvertently activated.

44 (b) Repealed by Session Laws 1979, c. 820, s. 8.

1 (c) The tenant may not unilaterally withhold rent prior to a judicial determination
2 of a right to do so.

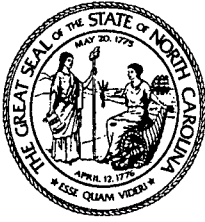
3 (d) A violation of this Article shall not constitute negligence per se."

4 **SECTION 5.** The amendment to G.S. 143-138(b) contained in Section 1 of
5 this act shall not be construed to imply that the Building Code Council not possess the
6 authority contained in that amendment prior to the effective date of Section 1 of this act.

7 **SECTION 6.** Any operable carbon monoxide detector installed before
8 January 1, 2009 shall be deemed to be in compliance with the provisions of G.S. 42-
9 42(a)(7) as set forth in Section 2 of this act.

10 **SECTION 7.** The Building Code Council shall study the needs and benefits
11 of carbon monoxide detectors as set forth in provisions in Section 1 of this bill, and
12 report the results of its study to the General Assembly on or before July 1, 2009.

13 **SECTION 8.** Sections 2, 3 and 4 of this act become effective January 1,
14 2010, and apply to residential rental agreements in effect on and after that date. The
15 remainder of this act is effective when it becomes law.



SENATE BILL 1924: Require Carbon Monoxide Detectors

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 24, 2008
Introduced by:	Sen. Purcell	Summary by:	Denise Huntley
Version:	PCS to First Edition S1924-CSTB-20		Research Assistant O. Walker Reagan Committee Co-counsel

SUMMARY: *The Proposed Committee Substitute to Senate Bill 1924 mandates that certain residential rental properties have an operable carbon monoxide detector after January 1, 2010, and authorizes the North Carolina Building Code Council to study and adopt provisions in the building code pertaining to the installation of carbon monoxide detectors in certain residential properties. This bill is a recommendation of the North Carolina Child Fatality Task Force.*

[As introduced, this bill was identical to H2471, as introduced by Reps. Weiss, Glazier, Carney, which is currently in House Judiciary II.]

CURRENT LAW: Under current law, there is no requirement for homes or residential rental properties to have carbon monoxide detectors. Current law does require smoke detectors in residential rental properties and authorizes the Building Code Council to require smoke detectors in dwellings.

BILL ANALYSIS: **Section 1** authorizes the Building Code Council to adopt provisions requiring the installation of either battery-operated or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel burning heater or appliance, fireplace or an attached garage. Carbon monoxide detectors shall be those listed by a nationally recognized testing laboratory that is OSHA-approved and shall be installed in accordance with certain national standards or manufacturer instructions. A carbon monoxide detector may be combined with a smoke detector if the combined detector complies with certain conditions.

Section 2 amends the Landlord-Tenant law to require a landlord to provide a minimum of one operable carbon monoxide detector, either battery-operated or electrical, per rental unit per level. Carbon monoxide detectors shall have national testing laboratory approval and comply with installation standards. Section 2 also outlines the responsibilities of the landlord and the tenant regarding carbon monoxide detectors. This section applies only to dwelling units having a fossil-fuel burning heater or appliance, fireplace, or an attached garage.

Section 3 amends the Landlord-Tenant law to require the tenant to not deliberately or negligently destroy, deface, damage, or remove any part of the carbon monoxide detector.

Sections 2 and 3 provide that landlord-tenant requirements for carbon monoxide detectors be the same as currently required for smoke detectors.

Section 4 provides that landlord-tenant obligations, penalties and remedies for carbon monoxide detectors be the same as currently required for smoke detectors.

Section 6 grandfathers in operable carbon monoxide detectors installed on or before January 1, 2009.

Senate Bill 1924

Page 2

Section 7 authorizes the Building Code Council to study the needs and benefits of carbon monoxide detectors as set forth in provisions in Section 1 of this bill and report to the General Assembly on or before July 1, 2009.

EFFECTIVE DATE: Sections 2, 3 and 4 of this act become effective January 1, 2010 and apply to residential rental agreements in effect on and after that date. The remainder of this act is effective when it becomes law.

S1924e1-SMTB-CSTB



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1924*

AMENDMENT NO. 111
(to be filled in by
Principal Clerk)

S1924-ARU-33 [v.1]

Page 1 of 1

Date 6-24, 2008

Comm. Sub. [YES]
Amends Title [NO]
S1924-CSTB-20

Senator Porcell

- 1 moves to amend the bill on page 2, lines 17 and 18,
- 2 by rewriting the lines to read:
- 3 "burning heater or appliance, fireplace, or an attached garage. Carbon monoxide
- 4 detectors shall be those listed by a".
- 5

SIGNED William R Porcell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE BILL 1924*
PROPOSED COMMITTEE SUBSTITUTE S1924-PCS85484-TB-20

Short Title: Require Carbon Monoxide Detectors.

(Public)

Sponsors:

Referred to:

May 22, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE NORTH CAROLINA BUILDING CODE COUNCIL
3 TO STUDY AND ADOPT PROVISIONS IN THE BUILDING CODE
4 PERTAINING TO THE INSTALLATION OF CARBON MONOXIDE
5 DETECTORS IN CERTAIN SINGLE-FAMILY OR MULTIFAMILY
6 DWELLINGS; TO REQUIRE THE INSTALLATION OF OPERATIONAL
7 CARBON MONOXIDE DETECTORS IN CERTAIN RESIDENTIAL RENTAL
8 PROPERTY; TO PROVIDE FOR MUTUAL OBLIGATIONS BETWEEN
9 LANDLORDS AND TENANTS REGARDING THE INSTALLATION AND
10 UPKEEP OF CARBON MONOXIDE DETECTORS; AND TO MAKE
11 CONFORMING CHANGES, AS RECOMMENDED BY THE NORTH
12 CAROLINA CHILD FATALITY TASK FORCE.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** G.S. 143-138(b) reads as rewritten:

15 "(b) Contents of the Code. – The North Carolina State Building Code, as adopted
16 by the Building Code Council, may include reasonable and suitable classifications of
17 buildings and structures, both as to use and occupancy; general building restrictions as
18 to location, height, and floor areas; rules for the lighting and ventilation of buildings and
19 structures; requirements concerning means of egress from buildings and structures;
20 requirements concerning means of ingress in buildings and structures; rules governing
21 construction and precautions to be taken during construction; rules as to permissible
22 materials, loads, and stresses; rules governing chimneys, heating appliances, elevators,
23 and other facilities connected with the buildings and structures; rules governing
24 plumbing, heating, air conditioning for the purpose of comfort cooling by the lowering
25 of temperature, and electrical systems; and such other reasonable rules pertaining to the
26 construction of buildings and structures and the installation of particular facilities
27 therein as may be found reasonably necessary for the protection of the occupants of the
28 building or structure, its neighbors, and members of the public at large.

1 In addition, the Code may regulate activities and conditions in buildings, structures,
2 and premises that pose dangers of fire, explosion, or related hazards. Such fire
3 prevention code provisions shall be considered the minimum standards necessary to
4 preserve and protect public health and safety, subject to approval by the Council of
5 more stringent provisions proposed by a municipality or county as provided in
6 G.S. 143-138(e). These provisions may include regulations requiring the installation of
7 either battery-operated or electrical smoke detectors in every dwelling unit used as
8 rental property, regardless of the date of construction of the rental property. For
9 dwelling units used as rental property constructed prior to 1975, smoke detectors shall
10 have an Underwriters' Laboratories, Inc., listing or other equivalent national testing
11 laboratory approval, and shall be installed in accordance with either the standard of the
12 National Fire Protection Association or the minimum protection designated in the
13 manufacturer's instructions, which the property owner shall retain or provide as proof of
14 compliance.

15 The Code may contain provisions requiring the installation of either battery-operated
16 or electrical carbon monoxide detectors in every dwelling unit having a fossil-fuel
17 burning heater or appliance, fireplace, or an attached garage. Carbon monoxide
18 detectors shall be those listed by a nationally recognized testing laboratory that is
19 OSHA-approved to test and certify to American National Standards
20 Institute/Underwriters Laboratories Standards ANSI/UL2034 or ANSI/UL2075 and
21 shall be installed in accordance with either the standard of the National Fire Protection
22 Association or the minimum protection designated in the manufacturer's instructions,
23 which the property owner shall retain or provide as proof of compliance. A carbon
24 monoxide detector may be combined with smoke detectors if the combined detector
25 does both of the following: (i) complies with ANSI/UL2034 or ANSI/UL2075 for
26 carbon monoxide alarms and ANSI/UL217 for smoke detectors; and (ii) emits an alarm
27 in a manner that clearly differentiates between detecting the presence of carbon
28 monoxide and the presence of smoke.

29 The Code may contain provisions regulating every type of building or structure,
30 wherever it might be situated in the State.

31 Provided further, that nothing in this Article shall be construed to make any building
32 rules applicable to farm buildings located outside the building-rules jurisdiction of any
33 municipality.

34 Provided further, that no building permit shall be required under the Code or any
35 local variance thereof approved under subsection (e) for any construction, installation,
36 repair, replacement, or alteration costing five thousand dollars (\$5,000) or less in any
37 single family residence or farm building unless the work involves: the addition, repair,
38 or replacement of load bearing structures; the addition (excluding replacement of same
39 size and capacity) or change in the design of plumbing; the addition, replacement or
40 change in the design of heating, air conditioning, or electrical wiring, devices,
41 appliances, or equipment, the use of materials not permitted by the North Carolina
42 Uniform Residential Building Code; or the addition (excluding replacement of like
43 grade of fire resistance) of roofing.

1 Provided further, that no building permit shall be required under such Code from any
2 State agency for the construction of any building or structure, the total cost of which is
3 less than twenty thousand dollars (\$20,000), except public or institutional buildings.

4 For the information of users thereof, the Code shall include as appendices [the
5 following:]

- 6 (1) Any rules governing boilers adopted by the Board of Boiler and
7 Pressure Vessels Rules,
- 8 (2) Any rules relating to the safe operation of elevators adopted by the
9 Commissioner of Labor, and
- 10 (3) Any rules relating to sanitation adopted by the Commission for Public
11 Health which the Building Code Council believes pertinent.

12 In addition, the Code may include references to such other rules of special types,
13 such as those of the Medical Care Commission and the Department of Public Instruction
14 as may be useful to persons using the Code. No rule issued by any agency other than the
15 Building Code Council shall be construed as a part of the Code, nor supersede that
16 Code, it being intended that they be presented with the Code for information only.

17 Nothing in this Article shall extend to or be construed as being applicable to the
18 regulation of the design, construction, location, installation, or operation of (1)
19 equipment for storing, handling, transporting, and utilizing liquefied petroleum gases
20 for fuel purposes or anhydrous ammonia or other liquid fertilizers, except for liquefied
21 petroleum gas from the outlet of the first stage pressure regulator to and including each
22 liquefied petroleum gas utilization device within a building or structure covered by the
23 Code, or (2) equipment or facilities, other than buildings, of a public utility, as defined
24 in G.S. 62-3, or an electric or telephone membership corporation, including without
25 limitation poles, towers, and other structures supporting electric or communication
26 lines.

27 Nothing in this Article shall extend to or be construed as being applicable to the
28 regulation of the design, construction, location, installation, or operation of industrial
29 machinery. However, if during the building code inspection process, an electrical
30 inspector has any concerns about the electrical safety of a piece of industrial machinery,
31 the electrical inspector may refer that concern to the Occupational Safety and Health
32 Division in the North Carolina Department of Labor but shall not withhold the
33 certificate of occupancy nor mandate third-party testing of the industrial machinery
34 based solely on this concern. For the purposes of this paragraph, "industrial machinery"
35 means equipment and machinery used in a system of operations for the explicit purpose
36 of producing a product. The term does not include equipment that is permanently
37 attached to or a component part of a building and related to general building services
38 such as ventilation, heating and cooling, plumbing, fire suppression or prevention, and
39 general electrical transmission.

40 In addition, the Code may contain rules concerning minimum efficiency
41 requirements for replacement water heaters, which shall consider reasonable availability
42 from manufacturers to meet installation space requirements and may contain rules
43 concerning energy efficiency that require all hot water plumbing pipes that are larger
44 than one-fourth of an inch to be insulated.

1 No State, county, or local building code or regulation shall prohibit the use of special
2 locking mechanisms for seclusion rooms in the public schools approved under
3 G.S. 115C-391.1(e)(1)e., provided that the special locking mechanism shall be
4 constructed so that it will engage only when a key, knob, handle, button, or other similar
5 device is being held in position by a person, and provided further that, if the mechanism
6 is electrically or electronically controlled, it automatically disengages when the
7 building's fire alarm is activated. Upon release of the locking mechanism by a
8 supervising adult, the door must be able to be opened readily."

9 **SECTION 2.** G.S. 42-42(a) is amended by adding the following new
10 subdivision to read:

11 "(a) The landlord shall:

12 ...

13 (7) Provide a minimum of one operable carbon monoxide detector per
14 rental unit per level, either battery-operated or electrical, that is listed
15 by a nationally recognized testing laboratory that is OSHA-approved
16 to test and certify to American National Standards
17 Institute/Underwriters Laboratories Standards ANSI/UL2034 or
18 ANSI/UL2075, and install the carbon monoxide detectors in
19 accordance with either the standards of the National Fire Protection
20 Association or the minimum protection designated in the
21 manufacturer's instructions, which the landlord shall retain or provide
22 as proof of compliance. A landlord that installs one carbon monoxide
23 detector per rental unit per level shall be deemed to be in compliance
24 with standards under this subdivision covering the location and
25 number of detectors. The landlord shall replace or repair the carbon
26 monoxide detectors within 15 days of receipt of notification if the
27 landlord is notified of needed replacement or repairs in writing by the
28 tenant. The landlord shall ensure that a carbon monoxide detector is
29 operable and in good repair at the beginning of each tenancy. Unless
30 the landlord and the tenant have a written agreement to the contrary,
31 the landlord shall place new batteries in a battery-operated carbon
32 monoxide detector at the beginning of a tenancy, and the tenant shall
33 replace the batteries as needed during the tenancy. Failure of the tenant
34 to replace the batteries as needed shall not be considered as negligence
35 on the part of the tenant or the landlord. A carbon monoxide detector
36 may be combined with smoke detectors if the combined detector does
37 both of the following: (i) complies with ANSI/UL2034 or
38 ANSI/UL2075 for carbon monoxide alarms and ANSI/UL217 for
39 smoke detectors; and (ii) emits an alarm in a manner that clearly
40 differentiates between detecting the presence of carbon monoxide and
41 the presence of smoke. This subdivision applies only to dwelling units
42 having a fossil-fuel burning heater or appliance, fireplace, or an
43 attached garage.

44"

1 **SECTION 3.** G.S. 42-43(a)(4) and (a)(7) read as rewritten:

2 **"§ 42-43. Tenant to maintain dwelling unit.**

3 (a) The tenant shall:

4 ...
5 (4) Not deliberately or negligently destroy, deface, damage, or remove any
6 part of the premises, nor render inoperable the smoke detector or
7 carbon monoxide detector provided by the landlord, or knowingly
8 permit any person to do so.

9 ...
10 (7) Notify the landlord, in writing, of the need for replacement of or
11 repairs to a smoke ~~detector~~ detector or carbon monoxide detector. The
12 landlord shall ensure that a smoke detector ~~is~~ and carbon monoxide
13 detector are operable and in good repair at the beginning of each
14 tenancy. Unless the landlord and the tenant have a written agreement
15 to the contrary, the landlord shall place new batteries in a
16 battery-operated smoke detector and battery-operated carbon
17 monoxide detector at the beginning of a tenancy and the tenant shall
18 replace the batteries as needed during the tenancy. Failure of the tenant
19 to replace the batteries as needed shall not be considered as negligence
20 on the part of the tenant or the landlord."

21 **SECTION 4.** G.S. 42-44 reads as rewritten:

22 **"§ 42-44. General remedies, penalties, and limitations.**

23 (a) Any right or obligation declared by this Chapter is enforceable by civil
24 action, in addition to other remedies of law and in equity.

25 (a1) If a landlord fails to provide, install, replace, or repair a smoke detector under
26 the provisions of G.S. 42-42(a)(5) or a carbon monoxide detector under the provisions
27 of G.S. 42-42(a)(7) within 30 days of having received written notice from the tenant or
28 any agent of State or local government of the landlord's failure to do so, the landlord
29 shall be responsible for an infraction and shall be subject to a fine of not more than two
30 hundred fifty dollars (\$250.00) for each violation. The landlord may temporarily
31 disconnect a smoke detector or carbon monoxide detector in a dwelling unit or common
32 area for construction or rehabilitation activities when such activities are likely to
33 activate the smoke detector or carbon monoxide detector or make it inactive.

34 (a2) If a smoke detector or carbon monoxide detector is disabled or damaged,
35 other than through actions of the landlord, the landlord's agents, or acts of God, the
36 tenant shall reimburse the landlord the reasonable and actual cost for repairing or
37 replacing the smoke detector or carbon monoxide detector within 30 days of having
38 received written notice from the landlord or any agent of State or local government of
39 the need for the tenant to make such reimbursement. If the tenant fails to make
40 reimbursement within 30 days, the tenant shall be responsible for an infraction and
41 subject to a fine of not more than one hundred dollars (\$100.00) for each violation. The
42 tenant may temporarily disconnect a smoke detector or carbon monoxide detector in a
43 dwelling unit to replace the batteries or when it has been inadvertently activated.

44 (b) Repealed by Session Laws 1979, c. 820, s. 8.

1 (c) The tenant may not unilaterally withhold rent prior to a judicial determination
2 of a right to do so.

3 (d) A violation of this Article shall not constitute negligence per se."

4 **SECTION 5.** The amendment to G.S. 143-138(b) contained in Section 1 of
5 this act shall not be construed to imply that the Building Code Council not possess the
6 authority contained in that amendment prior to the effective date of Section 1 of this act.

7 **SECTION 6.** Any operable carbon monoxide detector installed before
8 January 1, 2009, shall be deemed to be in compliance with the provisions of
9 G.S. 42-42(a)(7) as set forth in Section 2 of this act.

10 **SECTION 7.** The Building Code Council shall study the needs and benefits
11 of carbon monoxide detectors as set forth in provisions in Section 1 of this bill, and
12 report the results of its study to the General Assembly on or before July 1, 2009.

13 **SECTION 8.** Sections 2, 3, and 4 of this act become effective January 1,
14 2010, and apply to residential rental agreements in effect on and after that date. The
15 remainder of this act is effective when it becomes law.

S.B. 1946
JD # 2532

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO CODIFY THE STANDARDS GOVERNING ENERGY EFFICIENCY AND WATER USE FOR MAJOR FACILITY CONSTRUCTION AND RENOVATION PROJECTS INVOLVING STATE, UNIVERSITY, AND COMMUNITY COLLEGE BUILDINGS IN ORDER TO REDUCE THE CONSUMPTION OF ENERGY AND WATER, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Introduced by Senator(s)

Cowell

Cowell

Principal Clerk's Use Only

FILED MAY 21 2008

PASSED 1st READING

MAY 22 2008

AND REFERRED TO COMMITTEE
ON

Commercial, Small

Bus + Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

1

SENATE BILL 1946*

Short Title: Codify Energy Efficiency in Public Buildings.

(Public)

Sponsors: Senator Cowell.

Referred to: Commerce, Small Business and Entrepreneurship.

May 22, 2008

A BILL TO BE ENTITLED
AN ACT TO CODIFY THE STANDARDS GOVERNING ENERGY EFFICIENCY
AND WATER USE FOR MAJOR FACILITY CONSTRUCTION AND
RENOVATION PROJECTS INVOLVING STATE, UNIVERSITY, AND
COMMUNITY COLLEGE BUILDINGS IN ORDER TO REDUCE THE
CONSUMPTION OF ENERGY AND WATER, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"Article 8C.

"Performance Standards for Sustainable, Energy-Efficient Public Buildings.

"§ 143-135.35. Findings; legislative intent.

The General Assembly finds that public buildings can be built and renovated using sustainable, energy-efficient methods that save money, reduce negative environmental impacts, improve employee and student performance, and make employees and students more productive. The main objectives of sustainable, energy-efficient design are to avoid resource depletion of energy, water, and raw materials; prevent environmental degradation caused by facilities and infrastructure throughout their life cycle; and create buildings that are livable, comfortable, safe, and productive. It is the intent of the General Assembly that State-owned buildings and buildings of The University of North Carolina and the North Carolina Community College System be improved by establishing specific performance standards for sustainable, energy-efficient public buildings. These performance standards should be based upon recognized, consensus standards that are supported by science and have a demonstrated performance record. The General Assembly also intends, in order to ensure that the economic and environmental objectives of this Article are achieved, that State agencies, The University of North Carolina, and the North Carolina Community College System determine whether the performance standards are met for major facility construction

1 and renovation projects, measure utility and maintenance costs, and verify whether
2 these standards result in savings. Also, it is the intent of the General Assembly to
3 establish a priority to use North Carolina-based resources, building materials, products,
4 industries, manufacturers, and businesses to provide economic development to North
5 Carolina and to meet the objectives of this Article.

6 **"§ 143-135.36. Definitions.**

7 As used in this section, the following definitions apply unless the context requires
8 otherwise:

- 9 (1) "ASHRAE" means the American Society of Heating, Refrigerating
10 and Air-Conditioning Engineers, Inc.
- 11 (2) "Commission" means to document and to verify throughout the
12 construction process whether the performance of a building, a
13 component of a building, a system of a building, or a component of a
14 building system meets specified objectives, criteria, and agency project
15 requirements.
- 16 (3) "Department" means the Department of Administration.
- 17 (4) "Institutions of higher education" means the constituent institutions of
18 The University of North Carolina, the regional institutions as defined
19 in G.S. 115D-2, and the community colleges as defined in
20 G.S. 115D-2.
- 21 (5) "Major facility construction project" means a project to construct a
22 building larger than 20,000 gross square feet of occupied or
23 conditioned space, as defined in the North Carolina State Building
24 Code adopted under Article 9 of Chapter 143 of the General Statutes.
25 "Major facility construction project" does not include a project to
26 construct a transmitter building or a pumping station.
- 27 (6) "Major facility renovation project" means a project to renovate a
28 building when the cost of the project is greater than fifty percent (50%)
29 of the insurance value of the building prior to the renovation and the
30 renovated portion of the building is larger than 20,000 gross square
31 feet of occupied or conditioned space, as defined in the North Carolina
32 State Building Code. "Major facility renovation project" does not
33 include a project to renovate a transmitter building or a pumping
34 station. "Major facility renovation project" does not include a project
35 to renovate a building having historic, architectural, or cultural
36 significance under G.S. 143-23.1.
- 37 (7) "Public agency" means every State office, officer, board, department,
38 and commission and institutions of higher education.

39 **"§ 143-135.37. Energy and water use standards for public major facility**
40 **construction and renovation projects; verification and reporting of**
41 **energy and water use.**

42 (a) Program Established. – The Sustainable Energy-Efficient Buildings Program
43 is established within the Department to be administered by the Department. This
44 program applies to any major facility construction or renovation project of a public

1 agency that is funded in whole or in part from an appropriation in the State capital
2 budget or through a financing contract as defined in G.S. 142-82.

3 (b) Energy-Efficiency Standard. – For every major facility construction project of
4 a public agency, the building shall be designed and constructed so that the calculated
5 energy consumption is at least thirty percent (30%) less than the energy consumption
6 for the same building as calculated using the energy-efficiency standard in ASHRAE
7 90.1-2004. For every major facility renovation project of a public agency, the renovated
8 building shall be designed and constructed so that the calculated energy consumption is
9 at least twenty percent (20%) less than the energy consumption for the same renovated
10 building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For
11 the purposes of this subsection, any exception or special standard for a specific type of
12 building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

13 (c) Water Use Standard. – For every major facility construction or renovation
14 project of a public agency, the water system shall be designed and constructed so that
15 the calculated indoor potable water use is at least twenty percent (20%) less than the
16 indoor potable water use for the same building as calculated using the fixture
17 performance requirements related to plumbing under the 2006 North Carolina State
18 Building Code. For every major facility construction project of a public agency, the
19 water system shall be designed and constructed so that the calculated sum of the outdoor
20 potable water use and the harvested stormwater use is at least fifty percent (50%) less
21 than the sum of the outdoor potable water use and the harvested stormwater use for the
22 same building as calculated using the performance requirements related to plumbing
23 under the 2006 North Carolina State Building Code. For every major facility renovation
24 project of a public agency, the Department shall determine on a project-by-project basis
25 what reduced level of outdoor potable use or harvested stormwater use, if any, is a
26 feasible requirement for the project, but the Department shall not require a greater
27 reduction than is required under this subsection for a major facility construction project.
28 To reduce the potable outdoor water use as required under this subsection, landscape
29 materials that are water use efficient and irrigation strategies that include reuse and
30 recycling of the water may be used.

31 (d) Performance Verification. – In order to be able to verify performance of a
32 building component or an energy or water system component, the construction contract
33 shall include provisions that require each building component and each energy and
34 water system component to be commissioned, and these provisions shall be included at
35 the earliest phase of the construction process as possible and in no case later than the
36 schematic design phase of the project. Such commissioning shall continue through the
37 initial operation of the building. The project design and construction teams and the
38 public agency shall jointly determine what level of commissioning is appropriate for the
39 size and complexity of the building or its energy and water system components.

40 (e) Separate Utility Meters. – In order to be able to monitor the initial cost and
41 the continuing costs of the energy and water systems, a separate meter for each
42 electricity, natural gas, fuel oil, and water utility shall be installed at each building
43 undergoing a major facility construction or renovation project. Each meter shall be
44 installed in accordance with the United States Department of Energy guidelines issued

under section 103 of the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 594 (2005)). Starting with the first month of facility operation, the public agency shall compare data obtained from each of these meters by month and by year with the applicable energy-efficiency standard under subsection (b) of this section and the applicable water use standard for the project under subsection (c) of this section and report annually no later than August 1 of each year to the Office of State Construction within the Department. If the average energy use or the average water use over the initial 12-month period of facility operation exceeds the applicable energy-efficiency standard under subsection (b) of this section or exceeds the applicable water use standard under subsection (c) of this section by fifteen percent (15%) or more, the public agency shall investigate the actual energy or water use, determine the cause of the discrepancy, and recommend corrections or modifications to meet the applicable standard.

"§ 143-135.38. Use of other standard when standard not practicable.

When the Department, public agency, and the design team determine that the energy-efficiency standard or the water use standard required under G.S. 143-135.37 is not practicable for a major facility construction or renovation project, then it must be determined by the State Building Commission if the standard is not practicable for the major facility construction or renovation project. If the State Building Commission determines the standard is not practicable for that project, the State Building Commission shall determine which standard is practicable for the design and construction for that major facility construction or renovation project. If a standard required under G.S. 143-135.37 is not followed for that project, the State Building Commission shall report this information and the reasons to the Department within 90 days of its determination.

"§ 143-135.39. Guidelines for Administering the Sustainable Energy-Efficient Buildings Program.

(a) Policies and Technical Guidelines. – The Department, in consultation with public agencies, shall develop and issue policies and technical guidelines to implement this Article for public agencies. The purpose of these policies and guidelines is to establish procedures and methods for complying with the energy-efficiency standard or the water use standard for major facility construction and renovation projects under G.S. 143-135.37.

(b) Preproposal Conference. – As provided in the request for proposals for construction services, the public agency may hold a preproposal conference for prospective bidders to discuss compliance with, and achievement of, the energy-efficiency standard or the water use standard required under G.S. 143-135.37 for prospective respondents.

(c) Advisory Committee. – The Department shall create a sustainable, energy-efficient buildings advisory committee comprised of representatives from the design and construction industry involved in public works contracting, personnel from the public agencies responsible for overseeing public works projects, and others at the Department's discretion to provide advice on implementing this Article. Among other duties, the advisory committee shall make recommendations regarding the education

1 and training requirements under subsection (d) of this section, make recommendations
2 regarding specific education and training criteria that are appropriate for the various
3 roles with respect to, and levels of involvement in, a major facility construction or
4 renovation project subject to this Article or the roles regarding the operation and
5 maintenance of the facility, and make recommendations regarding developing a process
6 whereby the Department receives ongoing evaluations and feedback to assist the
7 Department in implementing this Article so as to effectuate the purpose of this Article.
8 Further, the advisory committee may make recommendations to the Department
9 regarding whether it is advisable to strengthen standards for energy-efficiency or water
10 use under this Article, whether it is advisable and feasible to add additional criteria to
11 achieve greater sustainability in the construction and renovation of public buildings, or
12 whether it is advisable and feasible to expand the scope of this Article to apply to
13 additional types of publicly financed buildings or to smaller facility projects.

14 (d) Education and Training Requirements. – The Department shall review the
15 advisory committee's recommendations under subsection (c) of this section regarding
16 education and training. For each of the following, the Department shall develop
17 education and training requirements that are consistent with the purpose of this Article
18 and that are appropriate for the various roles with respect to, and level of involvement
19 in, a major facility construction or renovation project or the roles regarding the
20 operation and maintenance of the facility:

21 (1) The chief financial officers of public agencies.

22 (2) For each public agency that is responsible for the payment of the
23 agency's utilities, the facility managers of these public agencies.

24 (3) The capital project coordinators of public agencies.

25 (4) Architects.

26 (5) Mechanical design engineers.

27 (e) Performance Review. – Annually the Department shall conduct a
28 performance review of the Sustainable Energy-Efficient Buildings Program. The
29 performance review shall include at least all of the following:

30 (1) Identification of the costs of implementing energy-efficiency and
31 water use standards in the design and construction of major facility
32 construction and renovation projects subject to this Article.

33 (2) Identification of operating savings attributable to the implementation
34 of energy-efficiency and water use standards, including, but not
35 limited to, savings in utility and maintenance costs.

36 (3) Identification of any impacts on employee productivity from using
37 energy-efficiency and water use standards.

38 (4) Evaluation of the effectiveness of the energy-efficiency and water use
39 standards established by this Article.

40 (5) Whether stricter standards or additional criteria for sustainable
41 building should be used than the standards under G.S. 143-135.37.

42 (6) Whether the Sustainable Energy-Efficient Buildings Program should
43 be expanded to include additional public agencies, to include

1 additional types of projects, or to include smaller major facility
2 construction or renovation projects.

3 (7) Any recommendations for any other changes regarding sustainable,
4 energy-efficient building standards that may be supported by the
5 Department's findings.

6 (f) Report on Performance Review. – Each year, the Department shall include in
7 its consolidated report under subsection (g) of this section a report of its findings under
8 the performance review under subsection (e) of this section.

9 (g) Consolidated Report Required. – The Department shall consolidate the report
10 required under subsection (f) of this section, the report under G.S. 143-135.37(e), the
11 report, if any, from the State Building Commission under G.S. 143-135.38, and the
12 report under G.S. 143-135.40 into one report. No later than October 1 of each year, this
13 consolidated report shall be transmitted to the Chairs of the General Government
14 Appropriations Subcommittees of both the Senate and the House of Representatives, the
15 Environmental Review Commission, and the Joint Legislative Commission on
16 Governmental Operations. The Department shall include any recommendations for
17 administrative or legislative proposals that would better fulfill the legislative intent of
18 this Article.

19 (h) Authority to Adopt Rules or Architectural or Engineering Standards. – The
20 Department may adopt rules to implement this Article. The Department may adopt
21 architectural or engineering standards as needed to implement this Article.

22 **"§ 143-135.40. Monitor construction standards and sustainable building standards.**

23 (a) The Department shall monitor the development of construction standards and
24 sustainable building standards to determine whether there is any standard that the
25 Department determines would better fulfill the intent of the Sustainable Energy-
26 Efficient Buildings Program to achieve sustainable, energy-efficient public buildings
27 than the standards under G.S. 143-135.37, and, if so, whether this Article should be
28 amended to provide for the use of any different standards or the use of any additional
29 standards to address additional aspects of sustainable, energy-efficient buildings.
30 Additional standards monitored shall address consideration of site development,
31 material and resource selection, and indoor environmental quality to enhance the health
32 or productivity of building occupants. Also, the Department shall monitor the
33 development of improved energy-efficiency standards developed by the American
34 Society of Heating, Refrigerating and Air-Conditioning Engineers, the ASHRAE
35 standards, shall monitor whether the State Building Code Council adopts any other
36 energy-efficiency standards for inclusion in the State Building Code that result in
37 greater energy efficiency and increased energy savings in major facility construction
38 and renovation projects under this Article, and shall monitor other standards for
39 sustainable, energy-efficient buildings that are based upon recognized, consensus
40 standards based on science and demonstrated performance, including the standards for
41 sustainable buildings under the Leadership in Energy and Environmental Design
42 (LEED) program, as authored by the United States Green Building Council.

43 (b) Each year, the Department shall report the results of its monitoring under this
44 section, including any recommendations for administrative or legislative proposals."

1 SECTION 2. G.S. 115D-20 is amended by adding a new subdivision to
2 read:

3 "(14) To comply with the design and construction requirements regarding
4 energy efficiency and water use in the Sustainable Energy Efficient
5 Buildings Program under Article 8C of Chapter 143 of the General
6 Statutes."

7 SECTION 3. Article 6 of Chapter 146 of the General Statutes is amended by
8 adding a new section to read:

9 "**§ 146-23.2. Purchase of buildings constructed or renovated to a certain energy-**
10 **efficiency standard.**

11 (a) A State agency shall not acquire by purchase any building unless the building
12 was designed and constructed to at least the same standards for energy-efficiency and
13 water use that the design and construction of a comparable State building was required
14 to meet at the time the building under consideration for purchase was constructed.
15 Further, a State agency shall not acquire by purchase any building that had a major
16 renovation unless the major renovation of the building was designed and constructed to
17 at least the same standards for energy-efficiency and water use that the design and
18 construction of a major renovation of a comparable State building was required to meet
19 at the time the building under consideration for purchase was renovated.

20 (b) This section does not apply to the purchase of a building having historic,
21 architectural, or cultural significance under G.S. 143-23.1. This section does not apply
22 to buildings that are acquired by devise or bequest."

23 SECTION 4. The initial report under G.S. 143-135.37(e), the initial report
24 under G.S. 143-135.39(f), and the initial report under G.S. 143-135.40 are due no later
25 than August 1, 2009. The initial consolidated report required under G.S. 143-135.39(g)
26 is due no later than October 1, 2009.

27 SECTION 5. Section 1 of S.L. 2007-546 is repealed.

28 SECTION 6. This act is effective when it becomes law. Section 1 and
29 Section 2 of this act apply to every major facility construction project, as defined in
30 G.S. 143-135.36 as enacted in Section 1 of this act, and every major facility renovation
31 project, as defined in G.S. 143-135.36 as enacted in Section 1 of this act, of a public
32 agency, as defined in G.S. 143-135.36 as enacted in Section 1 of this act, that has not
33 entered the schematic design phase prior to the effective date of this act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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D

SENATE BILL 1946*
PROPOSED COMMITTEE SUBSTITUTE S1946-PCS75590-ST-115

Short Title: Codify Energy Efficiency in Public Buildings.

(Public)

Sponsors:

Referred to:

May 22, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO CODIFY THE STANDARDS GOVERNING ENERGY EFFICIENCY
3 AND WATER USE FOR MAJOR FACILITY CONSTRUCTION AND
4 RENOVATION PROJECTS INVOLVING STATE, UNIVERSITY, AND
5 COMMUNITY COLLEGE BUILDINGS IN ORDER TO REDUCE THE
6 CONSUMPTION OF ENERGY AND WATER, AS RECOMMENDED BY THE
7 ENVIRONMENTAL REVIEW COMMISSION, AND TO ALLOW THE STATE,
8 THE UNIVERSITY OF NORTH CAROLINA SYSTEM, AND THE NORTH
9 CAROLINA COMMUNITY COLLEGE SYSTEM TO INSTALL PHOTO
10 LUMINESCENT EXIT SIGNS WHEN PERMITTED BY THE STATE
11 BUILDING CODE.

12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** Chapter 143 of the General Statutes is amended by adding a
14 new Article to read:

15 "Article 8C.

16 "Performance Standards for Sustainable, Energy-Efficient Public Buildings.

17 "**§ 143-135.35. Findings; legislative intent.**

18 The General Assembly finds that public buildings can be built and renovated using
19 sustainable, energy-efficient methods that save money, reduce negative environmental
20 impacts, improve employee and student performance, and make employees and students
21 more productive. The main objectives of sustainable, energy-efficient design are to
22 avoid resource depletion of energy, water, and raw materials; prevent environmental
23 degradation caused by facilities and infrastructure throughout their life cycle; and create
24 buildings that are livable, comfortable, safe, and productive. It is the intent of the
25 General Assembly that State-owned buildings and buildings of The University of North
26 Carolina and the North Carolina Community College System be improved by
27 establishing specific performance standards for sustainable, energy-efficient public
28 buildings. These performance standards should be based upon recognized, consensus

standards that are supported by science and have a demonstrated performance record. The General Assembly also intends, in order to ensure that the economic and environmental objectives of this Article are achieved, that State agencies, The University of North Carolina, and the North Carolina Community College System determine whether the performance standards are met for major facility construction and renovation projects, measure utility and maintenance costs, and verify whether these standards result in savings. Also, it is the intent of the General Assembly to establish a priority to use North Carolina-based resources, building materials, products, industries, manufacturers, and businesses to provide economic development to North Carolina and to meet the objectives of this Article.

"§ 143-135.36. Definitions.

As used in this section, the following definitions apply unless the context requires otherwise:

- (1) "ASHRAE" means the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
- (2) "Commission" means to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements.
- (3) "Department" means the Department of Administration.
- (4) "Institutions of higher education" means the constituent institutions of The University of North Carolina, the regional institutions as defined in G.S. 115D-2, and the community colleges as defined in G.S. 115D-2.
- (5) "Major facility construction project" means a project to construct a building larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code adopted under Article 9 of Chapter 143 of the General Statutes. "Major facility construction project" does not include a project to construct a transmitter building or a pumping station.
- (6) "Major facility renovation project" means a project to renovate a building when the cost of the project is greater than fifty percent (50%) of the insurance value of the building prior to the renovation and the renovated portion of the building is larger than 20,000 gross square feet of occupied or conditioned space, as defined in the North Carolina State Building Code. "Major facility renovation project" does not include a project to renovate a transmitter building or a pumping station. "Major facility renovation project" does not include a project to renovate a building having historic, architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the General Statutes.
- (7) "Public agency" means every State office, officer, board, department, and commission and institutions of higher education.

"§ 143-135.37. Energy and water use standards for public major facility construction and renovation projects; verification and reporting of energy and water use.

(a) Program Established. – The Sustainable Energy-Efficient Buildings Program is established within the Department to be administered by the Department. This program applies to any major facility construction or renovation project of a public agency that is funded in whole or in part from an appropriation in the State capital budget or through a financing contract as defined in G.S. 142-82.

(b) Energy-Efficiency Standard. – For every major facility construction project of a public agency, the building shall be designed and constructed so that the calculated energy consumption is at least thirty percent (30%) less than the energy consumption for the same building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For every major facility renovation project of a public agency, the renovated building shall be designed and constructed so that the calculated energy consumption is at least twenty percent (20%) less than the energy consumption for the same renovated building as calculated using the energy-efficiency standard in ASHRAE 90.1-2004. For the purposes of this subsection, any exception or special standard for a specific type of building found in ASHRAE 90.1-2004 is included in the ASHRAE 90.1-2004 standard.

(c) Water Use Standard. – For every major facility construction or renovation project of a public agency, the water system shall be designed and constructed so that the calculated indoor potable water use is at least twenty percent (20%) less than the indoor potable water use for the same building as calculated using the fixture performance requirements related to plumbing under the 2006 North Carolina State Building Code. For every major facility construction project of a public agency, the water system shall be designed and constructed so that the calculated sum of the outdoor potable water use and the harvested stormwater use is at least fifty percent (50%) less than the sum of the outdoor potable water use and the harvested stormwater use for the same building as calculated using the performance requirements related to plumbing under the 2006 North Carolina State Building Code. For every major facility renovation project of a public agency, the Department shall determine on a project-by-project basis what reduced level of outdoor potable use or harvested stormwater use, if any, is a feasible requirement for the project, but the Department shall not require a greater reduction than is required under this subsection for a major facility construction project. To reduce the potable outdoor water use as required under this subsection, landscape materials that are water use efficient and irrigation strategies that include reuse and recycling of the water may be used.

(d) Performance Verification. – In order to be able to verify performance of a building component or an energy or water system component, the construction contract shall include provisions that require each building component and each energy and water system component to be commissioned, and these provisions shall be included at the earliest phase of the construction process as possible and in no case later than the schematic design phase of the project. Such commissioning shall continue through the initial operation of the building. The project design and construction teams and the

public agency shall jointly determine what level of commissioning is appropriate for the size and complexity of the building or its energy and water system components.

(e) Separate Utility Meters. – In order to be able to monitor the initial cost and the continuing costs of the energy and water systems, a separate meter for each electricity, natural gas, fuel oil, and water utility shall be installed at each building undergoing a major facility construction or renovation project. Each meter shall be installed in accordance with the United States Department of Energy guidelines issued under section 103 of the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 594 (2005)). Starting with the first month of facility operation, the public agency shall compare data obtained from each of these meters by month and by year with the applicable energy-efficiency standard under subsection (b) of this section and the applicable water use standard for the project under subsection (c) of this section and report annually no later than August 1 of each year to the Office of State Construction within the Department. If the average energy use or the average water use over the initial 12-month period of facility operation exceeds the applicable energy-efficiency standard under subsection (b) of this section or exceeds the applicable water use standard under subsection (c) of this section by fifteen percent (15%) or more, the public agency shall investigate the actual energy or water use, determine the cause of the discrepancy, and recommend corrections or modifications to meet the applicable standard.

"§ 143-135.38. Use of other standard when standard not practicable.

When the Department, public agency, and the design team determine that the energy-efficiency standard or the water use standard required under G.S. 143-135.37 is not practicable for a major facility construction or renovation project, then it must be determined by the State Building Commission if the standard is not practicable for the major facility construction or renovation project. If the State Building Commission determines the standard is not practicable for that project, the State Building Commission shall determine which standard is practicable for the design and construction for that major facility construction or renovation project. If a standard required under G.S. 143-135.37 is not followed for that project, the State Building Commission shall report this information and the reasons to the Department within 90 days of its determination.

"§ 143-135.39. Guidelines for administering the Sustainable Energy-Efficient Buildings Program.

(a) Policies and Technical Guidelines. – The Department, in consultation with public agencies, shall develop and issue policies and technical guidelines to implement this Article for public agencies. The purpose of these policies and guidelines is to establish procedures and methods for complying with the energy-efficiency standard or the water use standard for major facility construction and renovation projects under G.S. 143-135.37.

(b) Preproposal Conference. – As provided in the request for proposals for construction services, the public agency may hold a preproposal conference for prospective bidders to discuss compliance with, and achievement of, the

1 energy-efficiency standard or the water use standard required under G.S. 143-135.37 for
2 prospective respondents.

3 (c) Advisory Committee. – The Department shall create a sustainable, energy-
4 efficient buildings advisory committee comprised of representatives from the design and
5 construction industry involved in public works contracting, personnel from the public
6 agencies responsible for overseeing public works projects, and others at the
7 Department's discretion to provide advice on implementing this Article. Among other
8 duties, the advisory committee shall make recommendations regarding the education
9 and training requirements under subsection (d) of this section, make recommendations
10 regarding specific education and training criteria that are appropriate for the various
11 roles with respect to, and levels of involvement in, a major facility construction or
12 renovation project subject to this Article or the roles regarding the operation and
13 maintenance of the facility, and make recommendations regarding developing a process
14 whereby the Department receives ongoing evaluations and feedback to assist the
15 Department in implementing this Article so as to effectuate the purpose of this Article.
16 Further, the advisory committee may make recommendations to the Department
17 regarding whether it is advisable to strengthen standards for energy-efficiency or water
18 use under this Article, whether it is advisable and feasible to add additional criteria to
19 achieve greater sustainability in the construction and renovation of public buildings, or
20 whether it is advisable and feasible to expand the scope of this Article to apply to
21 additional types of publicly financed buildings or to smaller facility projects.

22 (d) Education and Training Requirements. – The Department shall review the
23 advisory committee's recommendations under subsection (c) of this section regarding
24 education and training. For each of the following, the Department shall develop
25 education and training requirements that are consistent with the purpose of this Article
26 and that are appropriate for the various roles with respect to, and level of involvement
27 in, a major facility construction or renovation project or the roles regarding the
28 operation and maintenance of the facility:

29 (1) The chief financial officers of public agencies.

30 (2) For each public agency that is responsible for the payment of the
31 agency's utilities, the facility managers of these public agencies.

32 (3) The capital project coordinators of public agencies.

33 (4) Architects.

34 (5) Mechanical design engineers.

35 (e) Performance Review. – Annually the Department shall conduct a
36 performance review of the Sustainable Energy-Efficient Buildings Program. The
37 performance review shall include at least all of the following:

38 (1) Identification of the costs of implementing energy-efficiency and
39 water use standards in the design and construction of major facility
40 construction and renovation projects subject to this Article.

41 (2) Identification of operating savings attributable to the implementation
42 of energy-efficiency and water use standards, including, but not
43 limited to, savings in utility and maintenance costs.

- (3) Identification of any impacts on employee productivity from using energy-efficiency and water use standards.
- (4) Evaluation of the effectiveness of the energy-efficiency and water use standards established by this Article.
- (5) Whether stricter standards or additional criteria for sustainable buildings should be used other than the standards under G.S. 143-135.37.
- (6) Whether the Sustainable Energy-Efficient Buildings Program should be expanded to include additional public agencies, to include additional types of projects, or to include smaller major facility construction or renovation projects.
- (7) Any recommendations for any other changes regarding sustainable, energy-efficient building standards that may be supported by the Department's findings.

(f) Report on Performance Review. – Each year, the Department shall include in its consolidated report under subsection (g) of this section a report of its findings under the performance review under subsection (e) of this section.

(g) Consolidated Report Required. – The Department shall consolidate the report required under subsection (f) of this section, the report under G.S. 143-135.37(e), the report, if any, from the State Building Commission under G.S. 143-135.38, and the report under G.S. 143-135.40 into one report. No later than October 1 of each year, this consolidated report shall be transmitted to the Chairs of the General Government Appropriations Subcommittees of both the Senate and the House of Representatives, the Environmental Review Commission, and the Joint Legislative Commission on Governmental Operations. The Department shall include any recommendations for administrative or legislative proposals that would better fulfill the legislative intent of this Article.

(h) Authority to Adopt Rules or Architectural or Engineering Standards. – The Department may adopt rules to implement this Article. The Department may adopt architectural or engineering standards as needed to implement this Article.

"§ 143-135.40. Monitor construction standards and sustainable building standards.

(a) The Department shall monitor the development of construction standards and sustainable building standards to determine whether there is any standard that the Department determines would better fulfill the intent of the Sustainable Energy-Efficient Buildings Program to achieve sustainable, energy-efficient public buildings than the standards under G.S. 143-135.37, and, if so, whether this Article should be amended to provide for the use of any different standards or the use of any additional standards to address additional aspects of sustainable, energy-efficient buildings. Additional standards monitored shall address consideration of site development, material and resource selection, and indoor environmental quality to enhance the health or productivity of building occupants. Also, the Department shall monitor the development of improved energy-efficiency standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, the ASHRAE standards, shall monitor whether the State Building Code Council adopts any other

1 energy-efficiency standards for inclusion in the State Building Code that result in
2 greater energy efficiency and increased energy savings in major facility construction
3 and renovation projects under this Article, and shall monitor other standards for
4 sustainable, energy-efficient buildings that are based upon recognized, consensus
5 standards based on science and demonstrated performance, including the standards for
6 sustainable buildings under the Leadership in Energy and Environmental Design
7 (LEED) program, as authored by the United States Green Building Council.

8 (b) Each year, the Department shall report the results of its monitoring under this
9 section, including any recommendations for administrative or legislative proposals."

10 **SECTION 2.** G.S. 115D-20 is amended by adding a new subdivision to
11 read:

12 "(14) To comply with the design and construction requirements regarding
13 energy efficiency and water use in the Sustainable Energy-Efficient
14 Buildings Program under Article 8C of Chapter 143 of the General
15 Statutes."

16 **SECTION 3.** Article 6 of Chapter 146 of the General Statutes is amended by
17 adding a new section to read:

18 **"§ 146-23.2. Purchase of buildings constructed or renovated to a certain**
19 **energy-efficiency standard.**

20 (a) A State agency shall not acquire by purchase any building unless the building
21 was designed and constructed to at least the same standards for energy-efficiency and
22 water use that the design and construction of a comparable State building was required
23 to meet at the time the building under consideration for purchase was constructed.
24 Further, a State agency shall not acquire by purchase any building that had a major
25 renovation unless the major renovation of the building was designed and constructed to
26 at least the same standards for energy-efficiency and water use that the design and
27 construction of a major renovation of a comparable State building was required to meet
28 at the time the building under consideration for purchase was renovated.

29 (b) This section does not apply to the purchase of a building having historic,
30 architectural, or cultural significance under Part 4 of Article 2 of Chapter 143B of the
31 General Statutes. This section does not apply to buildings that are acquired by devise or
32 bequest."

33 **SECTION 4.** The initial report under G.S. 143-135.37(e), the initial report
34 under G.S. 143-135.39(f), and the initial report under G.S. 143-135.40 are due no later
35 than August 1, 2009. The initial consolidated report required under G.S. 143-135.39(g)
36 is due no later than October 1, 2009.

37 **SECTION 5.** Section 1 of S.L. 2007-546 is repealed.

38 **SECTION 6.** Section 2.1(a)(1) of S.L. 2007-546 reads as rewritten:

39 "(1) Lighting Systems. – The installation of exit signs that employ
40 light-emitting diode (LED) technology or photo luminescent
41 technology; the replacement of incandescent light bulbs with compact
42 fluorescent light bulbs; and where appropriate, as determined by the
43 Department of Administration, the installation of occupancy sensors or
44 optical sensors."

1 **SECTION 7.** This act is effective when it becomes law. Section 1 and
2 Section 2 of this act apply to every major facility construction project, as defined in
3 G.S. 143-135.36 as enacted in Section 1 of this act, and every major facility renovation
4 project, as defined in G.S. 143-135.36 as enacted in Section 1 of this act, of a public
5 agency, as defined in G.S. 143-135.36 as enacted in Section 1 of this act, that has not
6 entered the schematic design phase prior to the effective date of this act.



SENATE BILL 1946: Codify Energy Efficiency in Public Buildings

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 15, 2008
Introduced by:	Sen. Cowell	Summary by:	Tim Hovis
Version:	First Edition-PCS S1946-CSST-115[v.2]		Committee Counsel

SUMMARY: The Proposed Committee Substitute for Senate Bill 1946 repeals Section 1 of Chapter 546 of the 2007 Session Laws creating the Sustainable Energy Efficient Buildings Program in the Department of Administration and codifies that Section in a new Article 8C of Chapter 143 of the General Statutes.

The bill is largely identical to Section 1 of Chapter 546, except for the reorganization of existing provisions and substantive changes and additions, which include the following:

- Defines the term "commission" to mean "to document and to verify throughout the construction process whether the performance of a building, a component of a building, a system of a building, or a component of a building system meets specified objectives, criteria, and agency project requirements." This term was not defined in Chapter 546. (G.S. 143-135.36(2))
- Includes separate definitions for "major facility construction project" and "major facility renovation project." These terms are included in the definition of "major facility" under current law. Also, provides that a renovation project does not apply to a building having historic, architectural, or cultural significance. (G.S. 143-135.36(5) and (6))
- Clarifies the water use standards for renovation projects and requires the Department to determine on a project-by-project basis the reduced level of outdoor potable use or harvested stormwater use, if any, is feasible for renovation projects. The Department shall not require a greater reduction for outdoor potable water use for renovation projects than standards required for major construction projects. (G.S. 143-135.37(c))
- Requires construction contracts to include provisions requiring each building component, including energy and water systems, to be commissioned. These provisions must be included at the earliest phase of the construction process and not later than the schematic design phase. Commissioning shall continue through the initial operation of the building. The project design and construction teams shall determine the appropriate level of commissioning. (G.S. 143-135.37(d))
- Requires a public agency to compare data obtained from electricity, natural gas, fuel oil and water utility meters by month and by year with applicable energy and water use standards and report data annually, for the life of the building, to the State Construction Office. Current law requires this report to be done only for the first twelve months of building operation. (G.S. 143-135.37(e))
- All reporting requirements under the existing law are changed to clarify that the reports shall be made annually of each year, not just the for the initial year or two years following construction, and the Department shall consolidate all reports into one annual report to the Chairs of the

Senate Bill 1946

Page 2

General Government Appropriations Subcommittees, the Environmental Review Commission, and Joint Legislative Commission on Governmental Operations. (G.S. 143-135.39(g))

With the exception of Section 6 of the PCS which is summarized below, the bill is a recommendation of the Environmental Review Commission.

Section 6 of the bill would authorize the installation of exit signs that use photo luminescent technology in State, university, and community college buildings as an authorized energy conservation measure. Current law allows only the use of light-emitting diode (LED) technology in exit signs.

EFFECTIVE DATE: The Proposed Committee Substitute for Senate Bill 1946 is effective when it becomes law.

S1946e1-SMRG

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, June 24, 2008
Room 1027, Legislative Building

MINUTES

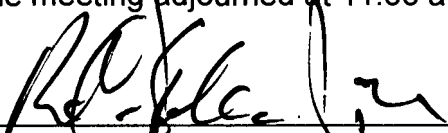
The Senate Commerce, Small Business and Entrepreneurship Committee met on Tuesday, June 24, 2008, at 11:00 a.m. in Room 1027 of the Legislative Building. Eighteen members of the Committee were present. Senator Soles recognized the following Pages assisting with the meeting: Toshawn Adams, Iesha Lawry, Alan Little, and Heather Smith, Gastonia, sponsored by Senator Hoyle; Georgia Van de Zande, Raleigh, sponsored by Senator Rand; and Shardai Webb, Raleigh, sponsored by Senator Shaw.

Senator Soles stated that the first order of business would be to consider S.B. 1924, Require Carbon Monoxide Detectors, sponsored by Senator Purcell. Senator Hoyle moved for adoption of the committee substitute bill. Senator Purcell and Walker Reagan of the Research Staff explained the bill. Senator Soles recognized Tom Vitaglione, Chairman, North Carolina Child Fatality Task Force, to speak on the bill. Senator Purcell offered Amendment No. 1 (attached), and moved for its adoption. Motion carried. After a question and answer period, Senator Purcell moved for a favorable report of the committee substitute bill, as amended. Motion carried.

The next order of business was consideration of S.B. 1946, Codify Energy Efficiency in Public Buildings, sponsored by Senator Cowell. Senator Hoyle moved for adoption of the committee substitute bill for discussion purposes. After Senator Cowell explained the bill, Senator McKissick moved for a favorable report for the committee substitute bill. Motion carried.

Senator Soles recognized Senator Phil Berger, who moved for adoption of the committee substitute bill for H.B. 738, Custodial Agreements & Clearing Corp. Act-AB. He then asked Rose Williams, Chief Legislative Counsel for the Department of Insurance, to explain the bill. After Ms. Williams' explanation of the committee substitute bill, Senator Phil Berger offered Amendment No. 1 (attached), and moved for its adoption. Motion carried. Following members' questions to and answers by Ms. Williams, Barbara Burke, Chief Deputy Commissioner of the Department of Insurance, Bill Hale, Special Counsel for the Department of Insurance, and John Bode, representing the Independent Insurance Agents of North Carolina, Senator Phil Berger moved for a favorable report for the committee substitute bill, as amended. Motion carried.

The meeting adjourned at 11:55 a.m.



Senator R. C. Soles, Jr., Chairman



Ramona Fitzgerald, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, June 25, 2008

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

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

H.B.	738	Custodial Agreements & Clearing Corp. Act.-AB
		Draft Number: PCS80625
		Sequential Referral: None
		Recommended Referral: None
		Long Title Amended: Yes

TOTAL REPORTED: 1

Committee Clerk Comments:

LB - 0 738

PUBLIC BILL

H.B. 0738

SESSION LAW

ID- SB 870

A BILL TO BE ENTITLED

AN ACT TO ADOPT THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' MODEL ACT ON CUSTODIAL AGREEMENTS AND CLEARING CORPORATIONS.

Goforth Holliman

Introduced by Representative(s): Goforth and Holliman (Primary Sponsors).

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

PASSED 1st READING
MAR 15 2007
AND REFERRED TO COMMITTEE
ON *Insurance*

Committee on *Insurance*
majority being present, having considered
s bill, recommend that it do ☒ pass.

Reps. Goforth + Holliman
For the Committee

REPORTED FAVORABLY APR 10 2007

PURSUANT TO RULE 36(b)
APR 10 2007
PLACED ON CALENDAR
OF 4-11-07

110-0 EV VV
PASSED 2nd & 3rd
READING

APR 12 2007

ORDERED SENT TO SENATE

Kenzie Weber

RECEIVED

APR 13 2007

From House of Representatives
By Clerk *[Signature]* 8:43 AM/PM

PASSED 1st READING

APR 16 2007

AND REFERRED TO COMMITTEE
ON *Commerce, Small*

Bus + Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 738*

Short Title: Custodial Agreements & Clearing Corp. Act.-AB (Public)

Sponsors: Representatives Goforth, Holliman (Primary Sponsors); and Alexander.

Referred to: Insurance.

March 15, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT THE NATIONAL ASSOCIATION OF INSURANCE
3 COMMISSIONERS' MODEL ACT ON CUSTODIAL AGREEMENTS AND
4 CLEARING CORPORATIONS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 58-5-1 through G.S. 58-5-125 is designated as Part 1 of
7 Article 5 of Chapter 58 of the General Statutes, entitled "Deposits and Bonds by
8 Insurance Companies."

9 **SECTION 2.** Article 5 of Chapter 58 of the General Statutes is amended by
10 adding a new Part to read:

11 "Part 2. Custodial Agreements and Clearing Corporations.

12 "§ 58-5-140. Purpose.

13 The purpose of this Part and G.S. 58-5-21 and G.S. 58-5-22 is to authorize insurance
14 companies to use modern systems for holding and transferring securities without
15 physical delivery of securities certificates, subject to appropriate rules of the
16 Commissioner.

17 "§ 58-5-145. Definitions.

18 As used in this Part and in G.S. 58-5-21 and G.S. 58-5-22:

19 (1) "Clearing corporation" means a corporation as defined in
20 G.S. 25-8-102(a)(5), except that with respect to securities issued by
21 institutions organized or existing under the laws of any foreign country
22 or securities used to meet the deposit requirements pursuant to the laws
23 of a foreign country as a condition of doing business in that country,
24 "clearing corporation" includes a corporation that is organized or
25 existing under the laws of any foreign country and is legally qualified
26 under those laws to effect transactions in securities by computerized
27 book-entry. "Clearing corporation" also includes "Treasury/Reserve
28 Automated Debt Entry Securities System" and "Treasury Direct"

1 book-entry securities systems established pursuant to 31 U.S.C. §
2 3101, et seq.

3 (2) "Custodian" means a national bank, state bank, trust company, broker,
4 or dealer that participates in a clearing corporation.

5 (3) "Securities" means instruments as defined in G.S. 25-8-102(a)(15).

6 "§ 58-5-150. Use of book-entry systems.

7 (a) Notwithstanding any other provision of law, a domestic insurance company
8 may deposit or arrange for the deposit of securities held in or purchased for its general
9 account and its separate accounts in a clearing corporation. When securities are
10 deposited with a clearing corporation, certificates representing securities of the same
11 class of the same issuer may be merged and held in bulk in the name of the nominee of
12 that clearing corporation with any other securities deposited with that clearing
13 corporation by any person, regardless of the ownership of those securities. Certificates
14 representing securities of small denominations may be merged into one or more
15 certificates of larger denominations. The records of any custodian through which an
16 insurance company holds securities in a clearing corporation shall at all times show that
17 those securities are held for that insurance company and for which accounts of that
18 company. Ownership of, and other interests in, those securities may be transferred by
19 bookkeeping entry on the books of the clearing corporation without physical delivery of
20 certificates representing those securities.

21 (b) The Commissioner may adopt rules governing the deposit by insurance
22 companies of securities with clearing corporations, including establishing standards for
23 national banks, state banks, trust companies, brokers, and dealers to qualify as
24 custodians for insurance company securities."

25 SECTION 3. Part 1 of Article 5 of Chapter 58 of the General Statutes is
26 amended by adding two new sections to read:

27 "§ 58-5-21. Deposit of securities by domestic insurance companies.

28 Notwithstanding any other provision of law, the securities qualified for deposit by
29 domestic insurance companies under this Part may be deposited with a clearing
30 corporation. Securities deposited with a clearing corporation and used to meet the
31 deposit requirements set forth in this Part shall be under the control of the
32 Commissioner and shall not be withdrawn by the insurance company without the
33 approval of the Commissioner. Any insurance company holding securities in this
34 manner shall provide to the Commissioner evidence issued by its custodian through
35 which the insurance company has deposited the securities in a clearing corporation in
36 order to establish that the securities are actually recorded in an account in the name of
37 the custodian and that the records of the custodian reflect that the securities are held
38 subject to the order of the Commissioner.

39 "§ 58-5-22. Deposit of securities by foreign insurance companies.

40 Notwithstanding any other provision of law, securities eligible for deposit under this
41 Part relating to deposit of securities by an insurance company as a condition of
42 commencing or continuing to do an insurance business in this State may be deposited
43 with a clearing corporation. Securities deposited with a clearing corporation and used to
44 meet the deposit requirements under this Part shall be under the control of the

1 Commissioner and shall not be withdrawn by the insurance company without the
2 approval of the Commissioner. Any insurance company holding securities in this
3 manner shall provide to the Commissioner evidence issued by its custodian in order to
4 establish that the securities are actually recorded in an account in the name of the
5 custodian and evidence that the records of the custodian reflect that the securities are
6 held subject to the order of the Commissioner."

7 **SECTION 4.** This act becomes effective October 1, 2008.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 738*
PROPOSED SENATE COMMITTEE SUBSTITUTE H738-CSRG-70 [v.19]

6/24/2008 10:04:25 AM

Short Title: Insurance Changes-AB.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST
COVERAGE; MAKE TECHNICAL CHANGES TO INSURANCE FINANCIAL
PROVISIONS; AMEND THE UNAUTHORIZED INSURER LAWS; MAKE
TECHNICAL CHANGES TO THE RATE EVASION LAW TO CLARIFY THAT IT
APPLIES ONLY TO PRIVATE PASSENGER VEHICLES AND TO ADD A
TERMINATION RESTRICTION CONSISTENT WITH G.S. 58-37-50 TO CLARIFY
THAT THE RATE EVASION LAW APPLIES TO CEDED AND UNCEDED
POLICIES; REVISE MANAGED CARE AND HMO RECORD RETENTION LAWS;
MAKE CHANGES TO THE HEALTH INSURANCE RISK POOL LAWS;
STRENGTHEN PROFESSIONAL EMPLOYER ORGANIZATION PROTECTIONS;
MAKE CHANGES TO THE LAW GOVERNING THE CODE OFFICIALS
QUALIFICATION BOARD; PROHIBIT FREE INSURANCE AND TO MAKE
OTHER MISCELLANEOUS CHANGES.

The General Assembly of North Carolina enacts:

PART I. UNINSURED AND UNDERINSURED MOTORIST COVERAGE.

SECTION 1.1. G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:

"(b) Such owner's policy of liability insurance:

...

- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury,

1 sickness or disease, including death, resulting therefrom, ~~in an amount~~
2 ~~not to be less than the financial responsibility amounts for bodily~~
3 ~~injury liability as set forth in G.S. 20-279.5 nor greater than one~~
4 ~~million dollars (\$1,000,000), as selected by the policy owner. with~~
5 ~~limits equal to the highest limits of bodily injury liability coverage for~~
6 ~~any one vehicle insured under the policy. The named insured may~~
7 ~~purchase uninsured motorist bodily injury coverage with greater limits,~~
8 ~~subject to the limitation that in no event shall uninsured motorist~~
9 ~~bodily injury coverage limits exceed one million dollars (\$1,000,000)~~
10 ~~per person and one million dollars (\$1,000,000) per accident. The~~
11 ~~insurer shall notify the named insured of his or her right to purchase~~
12 ~~uninsured motorist bodily injury coverage with greater limits, when~~
13 ~~the policy is issued and renewed, as provided in subsection (m) below.~~
14 The provisions shall include coverage for the protection of persons
15 insured thereunder who are legally entitled to recover damages from
16 owners or operators of uninsured motor vehicles because of injury to
17 or destruction of the property of such insured, with a limit in the
18 aggregate for all insureds in any one accident ~~of up equal to the highest~~
19 ~~limits of property damage liability coverage for any one vehicle~~
20 ~~insured~~ in the owner's policy of liability insurance, and subject, for
21 each insured, to an exclusion of the first one hundred dollars (\$100.00)
22 of such damages. The provision shall further provide that a written
23 statement by the liability insurer, whose name appears on the
24 certification of financial responsibility made by the owner of any
25 vehicle involved in an accident with the insured, that the other motor
26 vehicle was not covered by insurance at the time of the accident with
27 the insured shall operate as a prima facie presumption that the operator
28 of the other motor vehicle was uninsured at the time of the accident
29 with the insured for the purposes of recovery under this provision of
30 the insured's liability insurance policy. ~~The coverage required under~~
31 ~~this subdivision is not applicable where any insured named in the~~
32 ~~policy rejects the coverage. An insured named in the policy may select~~
33 ~~different coverage limits as provided in this subdivision. If the named~~
34 ~~insured in the policy does not reject uninsured motorist coverage and~~
35 ~~does not select different coverage limits, the amount of uninsured~~
36 ~~motorist coverage shall be equal to the highest limit of bodily injury~~
37 ~~and property damage liability coverage for any one vehicle in the~~
38 ~~policy. Once the option to reject the uninsured motorist coverage or to~~
39 ~~select different coverage limits is offered by the insurer, the insurer is~~
40 ~~not required to offer the option in any renewal, reinstatement,~~
41 ~~substitute, amended, altered, modified, transfer, or replacement policy~~
42 ~~unless the named insured makes a written request to exercise a~~
43 ~~different option. The selection or rejection of uninsured motorist~~
44 ~~coverage or the failure to select or reject by a named insured is valid~~

1 ~~and binding on all insureds and vehicles under the policy. Rejection of~~
2 ~~or selection of different coverage limits for uninsured motorist~~
3 ~~coverage for policies under the jurisdiction of the North Carolina Rate~~
4 ~~Bureau shall be made in writing by a named insured on a form~~
5 ~~promulgated by the Bureau and approved by the Commissioner of~~
6 ~~Insurance.~~

7 If a person who is legally entitled to recover damages from the
8 owner or operator of an uninsured motor vehicle is an insured under
9 the uninsured motorist coverage of a policy that insures more than one
10 motor vehicle, that person shall not be permitted to combine the
11 uninsured motorist limit applicable to any one motor vehicle with the
12 uninsured motorist limit applicable to any other motor vehicle to
13 determine the total amount of uninsured motorist coverage available to
14 that person. If a person who is legally entitled to recover damages from
15 the owner or operator of an uninsured motor vehicle is an insured
16 under the uninsured motorist coverage of more than one policy, that
17 person may combine the highest applicable uninsured motorist limit
18 available under each policy to determine the total amount of uninsured
19 motorist coverage available to that person. The previous sentence shall
20 apply only to insurance on nonfleet private passenger motor vehicles
21 as described in G.S. 58-40-10(1) and (2).

22 In addition to the above requirements relating to uninsured motorist
23 insurance, every policy of bodily injury liability insurance covering
24 liability arising out of the ownership, maintenance or use of any motor
25 vehicle, which policy is delivered or issued for delivery in this State,
26 shall be subject to the following provisions which need not be
27 contained therein.

- 28 a. A provision that the insurer shall be bound by a final judgment
29 taken by the insured against an uninsured motorist if the insurer
30 has been served with copy of summons, complaint or other
31 process in the action against the uninsured motorist by
32 registered or certified mail, return receipt requested, or in any
33 manner provided by law; provided however, that the
34 determination of whether a motorist is uninsured may be
35 decided only by an action against the insurer alone. The insurer,
36 upon being served as herein provided, shall be a party to the
37 action between the insured and the uninsured motorist though
38 not named in the caption of the pleadings and may defend the
39 suit in the name of the uninsured motorist or in its own name.
40 The insurer, upon being served with copy of summons,
41 complaint or other pleading, shall have the time allowed by
42 statute in which to answer, demur or otherwise plead (whether
43 the pleading is verified or not) to the summons, complaint or
44 other process served upon it. The consent of the insurer shall

1 not be required for the initiation of suit by the insured against
2 the uninsured motorist: Provided, however, no action shall be
3 initiated by the insured until 60 days following the posting of
4 notice to the insurer at the address shown on the policy or after
5 personal delivery of the notice to the insurer or its agent setting
6 forth the belief of the insured that the prospective defendant or
7 defendants are uninsured motorists. No default judgment shall
8 be entered when the insurer has timely filed an answer or other
9 pleading as required by law. The failure to post notice to the
10 insurer 60 days in advance of the initiation of suit shall not be
11 grounds for dismissal of the action, but shall automatically
12 extend the time for the filing of an answer or other pleadings to
13 60 days after the time of service of the summons, complaint, or
14 other process on the insurer.

- 15 b. Where the insured, under the uninsured motorist coverage,
16 claims that he has sustained bodily injury as the result of
17 collision between motor vehicles and asserts that the identity of
18 the operator or owner of a vehicle (other than a vehicle in which
19 the insured is a passenger) cannot be ascertained, the insured
20 may institute an action directly against the insurer: Provided, in
21 that event, the insured, or someone in his behalf, shall report the
22 accident within 24 hours or as soon thereafter as may be
23 practicable, to a police officer, peace officer, other judicial
24 officer, or to the Commissioner of Motor Vehicles. The insured
25 shall also within a reasonable time give notice to the insurer of
26 his injury, the extent thereof, and shall set forth in the notice the
27 time, date and place of the injury. Thereafter, on forms to be
28 mailed by the insurer within 15 days following receipt of the
29 notice of the accident to the insurer, the insured shall furnish to
30 insurer any further reasonable information concerning the
31 accident and the injury that the insurer requests. If the forms are
32 not furnished within 15 days, the insured is deemed to have
33 complied with the requirements for furnishing information to
34 the insurer. Suit may not be instituted against the insurer in less
35 than 60 days from the posting of the first notice of the injury or
36 accident to the insurer at the address shown on the policy or
37 after personal delivery of the notice to the insurer or its agent.
38 The failure to post notice to the insurer 60 days before the
39 initiation of the suit shall not be grounds for dismissal of the
40 action, but shall automatically extend the time for filing of an
41 answer or other pleadings to 60 days after the time of service of
42 the summons, complaint, or other process on the insurer.

43 Provided under this section the term "uninsured motor vehicle"
44 shall include, but not be limited to, an insured motor vehicle where the

1 liability insurer thereof is unable to make payment with respect to the
2 legal liability within the limits specified therein because of insolvency.

3 An insurer's insolvency protection shall be applicable only to
4 accidents occurring during a policy period in which its insured's
5 uninsured motorist coverage is in effect where the liability insurer of
6 the tort-feasor becomes insolvent within three years after such an
7 accident. Nothing herein shall be construed to prevent any insurer from
8 affording insolvency protection under terms and conditions more
9 favorable to the insured than is provided herein.

10 In the event of payment to any person under the coverage required
11 by this section and subject to the terms and conditions of coverage, the
12 insurer making payment shall, to the extent thereof, be entitled to the
13 proceeds of any settlement for judgment resulting from the exercise of
14 any limits of recovery of that person against any person or
15 organization legally responsible for the bodily injury for which the
16 payment is made, including the proceeds recoverable from the assets
17 of the insolvent insurer.

18 For the purpose of this section, an "uninsured motor vehicle" shall
19 be a motor vehicle as to which there is no bodily injury liability
20 insurance and property damage liability insurance in at least the
21 amounts specified in subsection (c) of G.S. 20-279.5, or there is that
22 insurance but the insurance company writing the insurance denies
23 coverage thereunder, or has become bankrupt, or there is no bond or
24 deposit of money or securities as provided in G.S. 20-279.24 or
25 20-279.25 in lieu of the bodily injury and property damage liability
26 insurance, or the owner of the motor vehicle has not qualified as a
27 self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is
28 not subject to the provisions of the Motor Vehicle Safety and Financial
29 Responsibility Act; but the term "uninsured motor vehicle" shall not
30 include:

- 31 a. A motor vehicle owned by the named insured;
- 32 b. A motor vehicle that is owned or operated by a self-insurer
33 within the meaning of any motor vehicle financial responsibility
34 law, motor carrier law or any similar law;
- 35 c. A motor vehicle that is owned by the United States of America,
36 Canada, a state, or any agency of any of the foregoing
37 (excluding, however, political subdivisions thereof);
- 38 d. A land motor vehicle or trailer, if operated on rails or
39 crawler-treads or while located for use as a residence or
40 premises and not as a vehicle; or
- 41 e. A farm-type tractor or equipment designed for use principally
42 off public roads, except while actually upon public roads.

43 For purposes of this section "persons insured" means the named
44 insured and, while resident of the same household, the spouse of any

1 named insured and relatives of either, while in a motor vehicle or
2 otherwise, and any person who uses with the consent, expressed or
3 implied, of the named insured, the motor vehicle to which the policy
4 applies and a guest in the motor vehicle to which the policy applies or
5 the personal representative of any of the above or any other person or
6 persons in lawful possession of the motor vehicle.

7 Notwithstanding the provisions of this subsection, no policy of
8 motor vehicle liability insurance applicable solely to commercial
9 motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to
10 fleet vehicles shall be required to provide uninsured motorist coverage.
11 Any motor vehicle liability policy that insures both commercial motor
12 vehicles as defined in G.S. 20-4.01(3d) and non-commercial motor
13 vehicles shall provide uninsured motorist coverage in accordance with
14 the provisions of this subsection in amounts equal to the highest limits
15 of bodily injury and property damage liability coverage for any one
16 non-commercial motor vehicle insured under the policy, subject to the
17 right of the insured to purchase higher uninsured motorist bodily injury
18 liability coverage limits as set forth in this subsection. For the purpose
19 of the immediately preceding sentence, non-commercial motor vehicle
20 shall mean any motor vehicle that is not a commercial motor vehicle as
21 defined in G.S. 20-4.01(3d), but that is otherwise subject to the
22 requirements of this subsection.

- 23 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
24 of this subsection, provide underinsured motorist coverage, to be used
25 only with a policy that is written at limits that exceed those prescribed
26 by subdivision (2) of this section ~~and that afford uninsured motorist~~
27 ~~coverage as provided by subdivision (3) of this subsection, in an~~
28 ~~amount not to be less than the financial responsibility amounts for~~
29 ~~bodily injury liability as set forth in G.S. 20-279.5 nor greater than one~~
30 ~~million dollars (\$1,000,000) as selected by the policy owner. section,~~
31 with limits equal to the highest limits of bodily injury liability
32 coverage for any one vehicle insured under the policy. The named
33 insured may purchase underinsured motorist coverage with greater
34 limits, subject to the limitation that in no event shall the underinsured
35 motorist coverage limits exceed one million dollars (\$1,000,000) per
36 person and one million dollars (\$1,000,000) per accident. The insurer
37 shall notify the named insured of his or her right to purchase
38 underinsured motorist coverage with greater limits, when the policy is
39 issued and renewed, as provided in subsection (m) below. An
40 "uninsured motor vehicle," as described in subdivision (3) of this
41 subsection, includes an "underinsured highway vehicle," which means
42 a highway vehicle with respect to the ownership, maintenance, or use
43 of which, the sum of the limits of liability under all bodily injury
44 liability bonds and insurance policies applicable at the time of the

1 accident is less than the applicable limits of underinsured motorist
2 coverage for the vehicle involved in the accident and insured under the
3 owner's policy. For purposes of an underinsured motorist claim
4 asserted by a person injured in an accident where more than one
5 person is injured, a highway vehicle will also be an "underinsured
6 highway vehicle" if the total amount actually paid to that person under
7 all bodily injury liability bonds and insurance policies applicable at the
8 time of the accident is less than the applicable limits of underinsured
9 motorist coverage for the vehicle involved in the accident and insured
10 under the owner's policy. Notwithstanding the immediately preceding
11 sentence, a highway vehicle shall not be an "underinsured motor
12 vehicle" for purposes of an underinsured motorist claim under an
13 owner's policy insuring that vehicle ~~if~~ unless the owner's policy
14 insuring that vehicle provides underinsured motorist coverage with
15 limits that are ~~less than or equal to~~ greater than that policy's bodily
16 injury liability limits. For the purposes of this subdivision, the term
17 "highway vehicle" means a land motor vehicle or trailer other than (i)
18 a farm-type tractor or other vehicle designed for use principally off
19 public roads and while not upon public roads, (ii) a vehicle operated on
20 rails or crawler-treads, or (iii) a vehicle while located for use as a
21 residence or premises. The provisions of subdivision (3) of this
22 subsection shall apply to the coverage required by this subdivision.
23 Underinsured motorist coverage is deemed to apply when, by reason of
24 payment of judgment or settlement, all liability bonds or insurance
25 policies providing coverage for bodily injury caused by the ownership,
26 maintenance, or use of the underinsured highway vehicle have been
27 exhausted. Exhaustion of that liability coverage for the purpose of any
28 single liability claim presented for underinsured motorist coverage is
29 deemed to occur when either (a) the limits of liability per claim have
30 been paid upon the claim, or (b) by reason of multiple claims, the
31 aggregate per occurrence limit of liability has been paid. Underinsured
32 motorist coverage is deemed to apply to the first dollar of an
33 underinsured motorist coverage claim beyond amounts paid to the
34 claimant under the exhausted liability policy.

35 In any event, the limit of underinsured motorist coverage
36 applicable to any claim is determined to be the difference between the
37 amount paid to the claimant under the exhausted liability policy or
38 policies and the limit of underinsured motorist coverage applicable to
39 the motor vehicle involved in the accident. Furthermore, if a claimant
40 is an insured under the underinsured motorist coverage on separate or
41 additional policies, the limit of underinsured motorist coverage
42 applicable to the claimant is the difference between the amount paid to
43 the claimant under the exhausted liability policy or policies and the
44 total limits of the claimant's underinsured motorist coverages as

1 determined by combining the highest limit available under each policy;
2 provided that this sentence shall apply only to insurance on nonfleet
3 private passenger motor vehicles as described in G.S. 58-40-15(9) and
4 (10). The underinsured motorist limits applicable to any one motor
5 vehicle under a policy shall not be combined with or added to the
6 limits applicable to any other motor vehicle under that policy.

7 An underinsured motorist insurer may at its option, upon a claim
8 pursuant to underinsured motorist coverage, pay moneys without there
9 having first been an exhaustion of the liability insurance policy
10 covering the ownership, use, and maintenance of the underinsured
11 highway vehicle. In the event of payment, the underinsured motorist
12 insurer shall be either: (a) entitled to receive by assignment from the
13 claimant any right or (b) subrogated to the claimant's right regarding
14 any claim the claimant has or had against the owner, operator, or
15 maintainer of the underinsured highway vehicle, provided that the
16 amount of the insurer's right by subrogation or assignment shall not
17 exceed payments made to the claimant by the insurer. No insurer shall
18 exercise any right of subrogation or any right to approve settlement
19 with the original owner, operator, or maintainer of the underinsured
20 highway vehicle under a policy providing coverage against an
21 underinsured motorist where the insurer has been provided with
22 written notice before a settlement between its insured and the
23 underinsured motorist and the insurer fails to advance a payment to the
24 insured in an amount equal to the tentative settlement within 30 days
25 following receipt of that notice. Further, the insurer shall have the
26 right, at its election, to pursue its claim by assignment or subrogation
27 in the name of the claimant, and the insurer shall not be denominated
28 as a party in its own name except upon its own election. Assignment or
29 subrogation as provided in this subdivision shall not, absent contrary
30 agreement, operate to defeat the claimant's right to pursue recovery
31 against the owner, operator, or maintainer of the underinsured highway
32 vehicle for damages beyond those paid by the underinsured motorist
33 insurer. The claimant and the underinsured motorist insurer may join
34 their claims in a single suit without requiring that the insurer be named
35 as a party. Any claimant who intends to pursue recovery against the
36 owner, operator, or maintainer of the underinsured highway vehicle for
37 moneys beyond those paid by the underinsured motorist insurer shall
38 before doing so give notice to the insurer and give the insurer, at its
39 expense, the opportunity to participate in the prosecution of the claim.
40 Upon the entry of judgment in a suit upon any such claim in which the
41 underinsured motorist insurer and claimant are joined, payment upon
42 the judgment, unless otherwise agreed to, shall be applied pro rata to
43 the claimant's claim beyond payment by the insurer of the owner,

1 operator or maintainer of the underinsured highway vehicle and the
2 claim of the underinsured motorist insurer.

3 A party injured by the operation of an underinsured highway
4 vehicle who institutes a suit for the recovery of moneys for those
5 injuries and in such an amount that, if recovered, would support a
6 claim under underinsured motorist coverage shall give notice of the
7 initiation of the suit to the underinsured motorist insurer as well as to
8 the insurer providing primary liability coverage upon the underinsured
9 highway vehicle. Upon receipt of notice, the underinsured motorist
10 insurer shall have the right to appear in defense of the claim without
11 being named as a party therein, and without being named as a party
12 may participate in the suit as fully as if it were a party. The
13 underinsured motorist insurer may elect, but may not be compelled, to
14 appear in the action in its own name and present therein a claim
15 against other parties; provided that application is made to and
16 approved by a presiding superior court judge, in any such suit, any
17 insurer providing primary liability insurance on the underinsured
18 highway vehicle may upon payment of all of its applicable limits of
19 liability be released from further liability or obligation to participate in
20 the defense of such proceeding. However, before approving any such
21 application, the court shall be persuaded that the owner, operator, or
22 maintainer of the underinsured highway vehicle against whom a claim
23 has been made has been apprised of the nature of the proceeding and
24 given his right to select counsel of his own choice to appear in the
25 action on his separate behalf. If an underinsured motorist insurer,
26 following the approval of the application, pays in settlement or partial
27 or total satisfaction of judgment moneys to the claimant, the insurer
28 shall be subrogated to or entitled to an assignment of the claimant's
29 rights against the owner, operator, or maintainer of the underinsured
30 highway vehicle and, provided that adequate notice of right of
31 independent representation was given to the owner, operator, or
32 maintainer, a finding of liability or the award of damages shall be res
33 judicata between the underinsured motorist insurer and the owner,
34 operator, or maintainer of underinsured highway vehicle.

35 As consideration for payment of policy limits by a liability insurer
36 on behalf of the owner, operator, or maintainer of an underinsured
37 motor vehicle, a party injured by an underinsured motor vehicle may
38 execute a contractual covenant not to enforce against the owner,
39 operator, or maintainer of the vehicle any judgment that exceeds the
40 policy limits. A covenant not to enforce judgment shall not preclude
41 the injured party from pursuing available underinsured motorist
42 benefits, unless the terms of the covenant expressly provide otherwise,
43 and shall not preclude an insurer providing underinsured motorist
44 coverage from pursuing any right of subrogation.

~~The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.~~

~~Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.~~

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and non-commercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one non-commercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, non-commercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection."

SECTION 1.2. G.S. 20-279.21 is amended by adding the following new subsections to read:

"(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured, when the policy is issued and renewed, that the named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. An insurer shall be deemed to

1 have given reasonable notice if it includes the following or substantially similar
2 language on the policy's original and renewal declarations pages or in a separate notice
3 accompanying the original and renewal declarations pages in at least 10 point type:

4 'NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY
5 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE
6 WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND
7 ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE
8 PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE
9 NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY
10 MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD
11 CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR
12 OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD
13 ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED
14 UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES.'

15 (n) Nothing in this section shall be construed to provide greater amounts of
16 uninsured or underinsured motorist coverage in a liability policy than the insured has
17 purchased from the insurer under this section.

18 (o) An insurer that fails to comply with subsection (m) of this section is subject
19 to a civil penalty under G.S. 58-2-70."

20 **PART II. INSURANCE COMPANY FINANCIAL SOLVENCY PROVISIONS.**

21 **SECTION 2.1. G.S. 58-5-50 reads as rewritten:**

22 **"§ 58-5-50. Deposits of foreign life insurance companies.**

23 In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign
24 life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having
25 that have a market value of four hundred thousand dollars (\$400,000) as a prerequisite
26 of doing business in this State. All foreign life insurance companies shall deposit an
27 additional two hundred thousand dollars (\$200,000) where such companies cannot show
28 three years of net operational gains prior to admission. income before being licensed in
29 this State."

30 **SECTION 2.2. The title of G.S. 58-10-145 reads as rewritten:**

31 **"§ 58-10-145. ~~Mono-line~~ Monoline requirement for mortgage guaranty insurers."**

32 **SECTION 2.3 G.S. 58-7-15(17) reads as rewritten:**

33 **"(17) "Credit insurance," meaning indemnifying merchants or other persons**
34 **extending credit against loss or damage resulting from the nonpayment**
35 **of debts owed to them; and including the incidental power to acquire**
36 **and dispose of debts so insured, and to collect any debts owed to the**
37 **insurer or to any person so insured by the insurer; and also including**
38 **insurance where the debt is secured by either (a) a junior lien on real**
39 **estate or (b) ~~where the debt is secured by~~ a first lien on real estate as**
40 **long as (i) the purpose of the debt being insured is not for the purchase**
41 **of the real estate and the insurance is limited to twenty-five percent**
42 **(25%) of the insurer's aggregate insured risk outstanding, before**
43 **reinsurance ceded or assumed or (ii) the insurance is not included**
44 **within the definition of mortgage guaranty insurance."**

SECTION 2.4. G.S. 58-5-71 reads as rewritten:

"§ 58-5-71. Liens of policyholders; subordination.

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims. 'Special deposit claims' has the same meaning set forth in G.S. 58-30-10(19).'"

SECTION 2.5. G.S. 58-5-55 reads as rewritten:

"§ 58-5-55. Deposits of capital and surplus by domestic insurance companies.

(a) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic stock insurance companies shall deposit their required statutory capital with the ~~Department~~Commissioner. Such deposits shall be under the exclusive control of the ~~Department~~Commissioner for the protection of policyholders.

(b) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic mutual insurance companies shall deposit at least fifty percent (50%) of their minimum required surplus with the ~~Department~~Commissioner, with the amount of the deposit to be determined by the Commissioner. Such deposits shall be under the exclusive control of the ~~Department~~Commissioner for the protection of policyholders.

(c) Deposits fulfilling the requirements of this section shall comprise:

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

SECTION 2.6. G.S. 58-7-75 is amended by adding two new subdivisions to read:

"§ 58-7-75. Amount of capital and/or surplus required; impairment of capital or surplus.

...
(1a) Non-stock Life Insurance Companies. - A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000) and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional surplus. Every such corporation shall at all times thereafter maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000). Provided that, any such corporation may conduct the kind of insurance authorized for stock accident and health insurance companies, as set out in G.S. 58-7-15(3)a and b, where its charter so permits, and only as long as it maintains a minimum surplus equal to the sum of the minimum surplus requirements of this subdivision and the minimum surplus requirements of subdivision (2a) of this section.

(2a) Non-stock Accident and Health Insurance Companies.

- a. A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in G.S. 58-7-15(3)a, when it has paid-in initial surplus of at least one million dollars (\$1,000,000). Every such corporation shall at all times thereafter maintain a minimum surplus of at least five hundred thousand dollars (\$500,000).
- b. Any non-stock corporation organized under the provisions of sub-subdivision a of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in G.S. 58-7-15(3)b, if it has a paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000). Every such corporation shall at all times maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000)."

PART III. UNAUTHORIZED INSURER AMENDMENTS.

SECTION 3.1. The title for G.S. 58-28-5 reads as rewritten:

"§ 58-28-5. Transacting business without ~~certificate of authority~~ a license prohibited; exceptions."

SECTION 3.2. G.S. 58-28-5(a) reads as rewritten:

"(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in ~~G.S. 58-28-10, G.S. 58-28-13~~ without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and

delivered in a state in which the company was authorized to transact business.

- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

SECTION 3.3. G.S. 58-28-40(a) reads as rewritten:

"(a) Any act of entering into a contract of insurance as an insurer or transacting insurance business in this State, as set forth in ~~G.S. 58-28-10~~ G.S. 58-28-12 by an unauthorized, foreign or alien company, shall be equivalent to and shall constitute an appointment by such company of the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of G.S. 58-28-5, and any of said acts shall be a signification of its agreement that any such process against it, which is so served, shall be of the same legal force and validity as if in fact served upon the company."

SECTION 3.4. Article 28 of Chapter 58 of the General Statutes of North Carolina is amended by adding three new sections to read:

"§ 58-28-12. Transacting insurance business in this State.

Definitions. -- As used in this section, G.S. 58-28-13, and G.S. 58-28-14:

- (1) "Admitted insurer" means an insurer that is licensed to write insurance in this State.
- (2) "Kind of insurance" means one of the types of insurance specified in G.S. 58-7-15.
- (3) "Nonadmitted insurer" means an insurer that is not licensed to write insurance in this State.
- (4) "Transacting insurance business" or "transact insurance business" means:

- a. The making of or proposing to make, as an insurer, an insurance contract.
- b. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
- c. The solicitation, taking, or receiving of an application for insurance.
- d. The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for a contract of insurance or any part of the contract of insurance.
- e. The issuance or delivery in this State of a contract of insurance to a resident of this State or to a person authorized to do business in this State.
- f. The solicitation, negotiation, procurement, effectuation, or renewal of a contract of insurance.
- g. The dissemination of information as to coverage or rates; forwarding of an application; delivery of a contract of insurance; inspection of a risk; the fixing of rates; the investigation or adjustment of a claim or loss; the transaction of matters after effectuation of a contract of insurance and arising out of the contract; or any other manner of representing or assisting a person or insurer in transacting insurance business with respect to properties, risks, or exposures located or to be performed in this State.
- h. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning this Chapter.
- i. The offering of insurance or the transacting of insurance business.
- j. Offering an agreement or contract which purports to alter, amend, or void coverage of an insurance contract.
- k. The transaction of any matters before or after the execution of contracts of insurance in contemplation of or arising out of the execution.
- l. Maintaining any agency or office in this State where any acts in furtherance of an insurance business are transacted, including the execution of contracts of insurance with citizens of this State or any other state.
- m. Maintaining files or records of contracts of insurance in this State.

“§58-28-13. Placement of insurance business

(a) An insurer shall not transact insurance business in this State unless it is an admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

1 (b) A person shall not transact insurance business or in this State directly or
2 indirectly act as agent for, or otherwise represent or aid on behalf of another, a
3 nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of
4 insurance, or renewals of insurance; forwarding of applications; delivery of policies or
5 contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or
6 losses; collection or forwarding of premiums; or in any other manner represent or assist
7 the insurer in transacting insurance business.

8 (c) A person who represents or aids a nonadmitted insurer in violation of this
9 section is subject to penalties or restitution, or both, as set forth in this section.

10 (d) This section does not prohibit employees, officers, directors, or partners of a
11 commercial insured from acting in the capacity of an insurance manager or buyer in
12 placing insurance on behalf of the employer, provided that the person's compensation is
13 not based on buying insurance.

14 (e) The venue of an act committed by mail or any other medium is at the point
15 where the matter transmitted by mail or other medium is delivered or issued for delivery
16 or takes effect

17 (f) The remedies prescribed in this section are not exclusive. Penalties may also be
18 assessed under Article 63 of this Chapter or G.S. 58-2-161, or both.

19 (g) If the Commissioner finds a violation of this section, the Commissioner may
20 order the payment of a monetary penalty after considering the factors in G.S. 58-28-14;
21 or petition the Superior Court of Wake County for an order directing payment of
22 restitution as provided in subsection (i) of this section; or both. The monetary penalty
23 shall not exceed five thousand dollars (\$5,000) for the first offense and shall not exceed
24 ten thousand dollars (\$10,000) for each succeeding offense. Each day during which a
25 violation occurs constitutes a separate violation. The clear proceeds of the penalty shall
26 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
27 115C-457.2. Payment of the civil penalty under this section shall be in addition to
28 payment of any other penalty for a violation of the criminal laws of this State.

29 (h) Upon petition of the Commissioner the Superior Court of Wake County may
30 order the person who committed a violation specified in this section to make restitution
31 in an amount that would make whole any person harmed by the violation. The petition
32 may be made at any time and also in any appeal of any order issued by the
33 Commissioner.

34 (i) Restitution to the Department for extraordinary administrative expenses incurred
35 in the investigation and hearing of the violation may also be ordered by the court in such
36 amount that would reimburse the Department for the expenses.

37 (j) Nothing in this section prevents the Commissioner from negotiating a mutually
38 acceptable agreement with any person as to any civil penalty or restitution.

39 (k) The Attorney General of the State of North Carolina at the request of and upon
40 information from the Commissioner shall initiate a civil action in behalf of the
41 Commissioner in any county of the State in which a violation under this section occurs
42 to recover the penalty provided. Service of process upon the nonadmitted insurer shall
43 be made under G.S. 58-28-40.

44 **“§ 58-28-14. Monetary penalty; factors to be considered.**

1 In determining the amount of the penalty under G.S. 58-28-13, the Commissioner
2 shall consider:

- 3 (1) The amount of money that inured to the benefit of the violator as a result
4 of the violation,
- 5 (2) Whether the violation was committed willfully,
- 6 (3) The prior record of the violator in complying or failing to comply with
7 laws, rules, or orders applicable to the violator.
- 8 (4) The failure of the violator to provide timely and complete responses to
9 the Department's inquiries about the violator's insurance activities in
10 North Carolina
- 11 (5) The extent and degree to which the violator marketed its insurance
12 product in this State
- 13 (6) The extent to which the violator's marketing materials, including fax
14 solicitations, Internet websites, circulars, or other forms of
15 advertisement or solicitations through any medium, were deceptive or
16 misleading to residents of this State.
- 17 (7) The number of residents of this State who enrolled in the violator's
18 insurance plan.
- 19 (8) The number of policies and amount of insurance coverage issued by the
20 violator to residents of this State.
- 21 (9) The failure of the violator to promptly refund premiums and other
22 consideration paid by residents of this State for insurance coverage
23 issued by the violator upon requests by the residents of this State or the
24 Department.
- 25 (10) The extent and degree of harm to residents of this State. In assessing
26 the extent and degree of harm, the Commissioner shall consider,
27 among other things, the amount of premiums and other consideration
28 paid by residents of this State for coverage issued by the violator, the
29 failure of the violator to pay claims made by residents of this State,
30 and number and dollar amount of claims made by residents of this
31 State that the violator has failed to pay.
- 32 (11) Whether the violator has a prior record of violating this Article or the
33 unauthorized insurance laws of any other state. "Prior record"
34 includes final administrative orders issued by the Commissioner or
35 insurance regulator of any other state; federal or state criminal
36 convictions, including pleas of guilty or nolo contendere; civil
37 judgments; and written settlement agreements of state administrative
38 proceedings, state or federal criminal proceedings, or civil lawsuits
39 against the violator or any entity of which the violator was either a
40 principal or owner."

41 **SECTION 3.5.** G.S. 58-28-10 is repealed.

42 **PART IV. RATE EVASION TECHNICAL AMENDMENTS.**

43 **SECTION 4.1.** G.S. 20-52(a)(4) reads as rewritten:

- (4) A statement that the owner is an eligible risk for insurance coverage as defined in ~~G.S. 58-37-1~~ G.S. 58-37-1(4a).

SECTION 4.2. G.S. 58-36-85(b) reads as rewritten:

"(b) Termination Restrictions. – An insurer shall not terminate a policy for a reason that is not specified in ~~G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g)~~ G.S. 58-2-164(g), G.S. 58-36-65(g), or G.S. 58-37-50. A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

An insurer is not required to send a written termination notice if any of the following applies:

- (1) The insurer has manifested its willingness to renew the policy by issuing or offering to issue a renewal policy, a certificate, or other evidence of renewal.
- (2) The insurer has manifested its willingness to renew the policy by any means not described in subdivision (1) of this subsection, including mailing a premium notice or expiration notice by first class mail to the named insured and the failure of the insured to pay the required premium on or before the premium due date.
- (3) A named insured has given written notification to the insurer or its agent that the named insured wants the policy to be terminated."

PART V. MANAGED CARE RECORD RETENTION AMENDMENTS AND HMO TECHNICAL AMENDMENT.

SECTION 5.1. G.S. 58-50-61(n) reads as rewritten:

"(n) Maintenance of Records. – Every insurer and URO shall maintain records of each review performed and each appeal received or reviewed, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. These records shall be retained by the insurer and URO for a period of ~~three-five years or or, for domestic companies,~~ until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later."

SECTION 5.2. G.S. 58-50-62(d) reads as rewritten:

"(d) Maintenance of Records. – Every insurer shall maintain records of each grievance received and the insurer's review of each grievance, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. The insurer shall retain these records for ~~three-five years or or, for domestic companies,~~ until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later."

SECTION 5.3. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Data Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the ~~Health Plan Employer Data and Information Set (HEDIS)~~ Healthcare Effectiveness Data and Information Set guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the HEDIS Healthcare Effectiveness and Information Set format."

PART VI. HEALTH INSURANCE RISK POOL AMENDMENTS.

SECTION 6.1. G.S. 58-50-180(c) reads as rewritten:

"(c) The initial appointments by the Governor and the General Assembly upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve a term of three years. The initial appointments by the Commissioner under sub-subdivisions a., b., and d. of subdivision (b)(3) of this section shall be for a term of two years. The initial appointments by the Commissioner under sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term of one year. All succeeding appointments shall be for terms of three years. Members shall not serve for more than two successive terms.

A Board member's term shall continue until the member's successor is appointed by the original appointing authority. Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur. A Board member may be removed by the appointing authority for cause.

The Board shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. Board members shall receive travel allowances under ~~G.S. 138-6~~ G.S. 138-5 when traveling to and from meetings of the ~~Board, Board or for official business of the Pool~~, but shall not receive any ~~subsistence allowance or per diem~~ under ~~G.S. 138-5~~ subdivision (a)(1) of that section."

SECTION 6.2. G.S. 58-50-180(e)(1) reads as rewritten:

"(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

- (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Executive Director ~~in collaboration with~~ acting upon

1 the approval or authorization of the Board, to enter into contracts with
2 similar plans of other states for the joint performance of common
3 administrative functions or with persons or other organizations for the
4 performance of administrative functions."

5 **SECTION 6.3.** G.S. 58-50-185(a) reads as rewritten:

6 "(a) The Executive Director, ~~in collaboration with the~~ approval or authorization of
7 the Board, shall select through a competitive bidding process one or more insurers to
8 administer the Pool. The Executive Director shall evaluate bids submitted based on
9 criteria established by the Board. The criteria shall allow for the comparison of
10 information about each bidding administrator and selection of a Pool Administrator
11 based on at least the following:

- 12 (1) Proven ability to handle health insurance coverage to individuals.
- 13 (2) Efficiency and timeliness of the claim processing procedures.
- 14 (3) Estimated total charges for administering the Pool.
- 15 (4) Ability to apply effective cost containment programs and procedures
16 and to administer the Pool in a cost-efficient manner.
- 17 (5) Financial condition and stability.
- 18 (6) Evidence of authority to provide third-party administrative services in
19 North Carolina."

20 **SECTION 6.4** G.S. 58-50-195(d) reads as rewritten:

21 "(d) Coverage under the Pool shall cease:

- 22 (1) On the date an individual is no longer a resident of this State.
- 23 (2) On the date an individual requests coverage to end.
- 24 (3) Upon the death of the covered individual.
- 25 (4) On the date State law requires cancellation of the Pool policy.
- 26 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
27 concerning the individual's eligibility or residence to which the
28 individual does not reply.
- 29 (6) Because the individual has failed to make the payments required under
30 this Part.
- 31 (7) Because the individual has performed an act or practice that constitutes
32 fraud or made an intentional misrepresentation of material fact under
33 the terms of the coverage."

34 **SECTION 6.5.** G.S. 58-50-210 reads as rewritten:

35 "**§ 58-50-210. Preexisting conditions.**

36 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
37 expenses incurred during the first 12 months following the effective date of coverage as
38 to any condition for which medical advice, care, or treatment was recommended or
39 received as to such conditions during the 12-month period immediately preceding the
40 effective date of coverage, except that no preexisting condition exclusion shall be
41 applied to a federally defined eligible ~~individual~~ individual or an individual who is
42 eligible for the pool because of his or her eligibility for the credit for health insurance
43 costs under the Trade adjustment Assistance Reform Act of 2002, section 35 of the
44 Internal Revenue Code of 1986, pursuant to G.S. 58-50-195(a)(6).

(b) ~~Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:~~

(1) ~~Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and~~

(2) ~~The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.~~

(c) The period of any preexisting condition exclusion shall be reduced by the aggregate of the periods of creditable coverage, if any, applicable as of the enrollment date. Credit for having satisfied some or all of the preexisting condition waiting period under previous creditable coverage, as defined in G.S. 58-51-17(a)(1), shall be provided in accordance with G.S. 58-51-17."

PART VII. PEO AMENDMENTS.

SECTION 7.1. The title of G.S. 58-89A-50 reads as rewritten:

"§ 58-89A-50. Surety bond; letter of credit; ~~credit~~; other deposits."

SECTION 7.2. 58-89A-50(a) reads as rewritten:

(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner in the an amount of one hundred thousand dollars (\$100,000) in favor of the State of North Carolina equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require."

SECTION 7.3. G.S. 58-89A-10 is repealed.

SECTION 7.4. G.S. 58-89A-105 reads as rewritten:

"§ 58-89A-105. Employee benefit plans; required disclosure; other reports.

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. Any health insurance plan sponsored and maintained by a licensee shall only be fully insured by one of the following:

(1) A licensed insurance company that is authorized to write accident and health insurance, as defined in G.S. 58-7-15(3).

(2) A service corporation organized and licensed under Article 65 of this Chapter.

(3) A health maintenance organization organized and licensed under Article 67 of this Chapter.

(b) ~~A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.~~

(c) ~~If a licensee offers to its assigned employees any health benefit plan that is not fully insured by an authorized insurer, the plan shall:~~

(1) ~~Utilize a third party administrator licensed or registered to do business in this State;~~

(2) ~~Hold all plan assets, including participant contributions, in a trust account; and~~

(3) ~~Provide sound reserves for the plan as determined using generally accepted actuarial standards.~~

(d) ~~For purposes of this section, a "health benefit plan that is not fully insured by an authorized insurer" includes any arrangement except an arrangement under which an insurance company licensed to write insurance in this State has issued an insurance policy that covers all of the obligations of the health benefit plan.~~ For the purposes of this section, a health insurance plan is fully insured only if all of the benefits provided under the plan are covered by an approved policy issued by one or more of the entities specified in subsection (a) of this section. A health insurance plan is not fully insured if the plan is any form of stop-loss insurance or any other form of reinsurance.

(e) Existing licensees shall comply with subsection (a) of this section by October 1, 2009. Before October 1, 2009, if an existing licensee sponsors and maintains any health insurance plan that is not fully insured by one or more of the entities specified in subsection (a) of this section, the licensee shall do all of the following:

(1) Use a third party administrator licensed or registered under Article 56 of this Chapter.

(2) Hold all plan assets, including participant contributions, in a trust account.

(3) Provide sound reserves for the plan as determined by generally accepted actuarial standards."

PART VIII. CODE OFFICIALS QUALIFICATION BOARD AMENDMENTS.

SECTION 8.1. G.S. 143-151.13(a) reads as rewritten:

"(a) No person ~~may~~ shall engage in Code enforcement ~~pursuant to~~ under this Article unless ~~he~~ that person possesses one of the following types of certificates, currently valid, issued by the Board attesting to ~~his~~ that person's qualifications to ~~hold such position;~~ engage in Code Enforcement: (i) a standard certificate; (ii) a limited certificate provided for in subsection ~~(e);~~ (c) of this section; or (iii) a probationary certificate provided for in subsection ~~(d);~~ (d) of this section. To obtain a standard certificate, a person must pass an examination, as prescribed by the ~~Board,~~ which Board or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina State Building Code and administrative procedures required to enforce the Code. ~~for Code enforcement.~~ The Board ~~shall~~ may issue a standard certificate of qualification to each person who successfully completes the ~~examination authorizing the person named therein~~ examination. The certificate authorizes that person to engage in Code enforcement and to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board."

SECTION 8.2. G.S. 143-151.16(d) reads as rewritten:

"(d) ~~The Board may establish and collect a fee to be paid by each applicant for examination in an amount not to exceed one hundred twenty five dollars (\$125.00). In addition, the Board may establish and collect a fee to be paid by each applicant applying for a review of the applicant's examination. The amount of the examination review fee~~

1 ~~shall not exceed fifty dollars (\$50.00). Examination and examination review fees may~~
2 ~~be paid directly to approved testing services that maintain regional facilities for the~~
3 ~~purpose of administering the Board's examinations. The Board may contract with~~
4 ~~persons for the development and administration of the examinations required by G.S.~~
5 ~~143-151.13(a), for course development related to the examinations, for review of a~~
6 ~~particular applicant's examination, and for other related services. The person with~~
7 ~~whom the Board contracts may charge applicants a reasonable fee for the costs~~
8 ~~associated with the development and administration of the examinations, for course~~
9 ~~development related to the examinations, for review of the applicant's examinations~~
10 ~~and for other related services. The fee shall be agreed to by the Board and the other~~
11 ~~contracting party. The amount of the fee under this subsection shall not exceed one~~
12 ~~hundred seventy-five dollars (\$175.00). Contracts for the development and~~
13 ~~administration of the examinations, for course development related to the examinations,~~
14 ~~and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143~~
15 ~~of the General Statutes or to Article 3D of Chapter 147 of the General Statutes."~~

16 **PART IX. PROHIBITION AGAINST FREE INSURANCE.**

17 **SECTION 9.1.** Chapter 66 of the General Statutes is amended by adding a
18 new Article 44 to read:

19 "Article 44.

20 "Free Insurance.

21 **"§ 66-380. Definitions.**

22 As used in this Article:

23 (1) "Consumer goods" means goods that are used primarily for personal,
24 family, or household purposes. For the purposes of this Article,
25 consumer goods do not include automobiles or residences.

26 (2) "Free insurance" means any of the following:

27 a. Insurance for which no identifiable or additional charge is made
28 to the purchaser or lessee of consumer goods or services
29 directly or indirectly connected with the purchase of consumer
30 goods.

31 b. Insurance for which an identifiable or additional charge is made
32 in an amount less than the cost of such insurance as to the
33 seller, lessor, or other person other than the insurer providing
34 the insurance.

35 **"§ 66-381. Free insurance.**

36 No person shall advertise, offer, or provide free insurance for damage, loss or theft
37 as an inducement to the purchase, sale, or rental of consumer goods or services directly
38 or indirectly connected with the purchase of consumer goods.

39 **"§ 66-382. Unfair trade practice.**

40 A violation of G.S. 66-381 constitutes an unfair trade practice under G.S. 75-1.1."

41 **PART X. MISCELLANEOUS CHANGES.**

42 **SECTION 10.1.** G.S. 58-21-65(b) reads as rewritten:

1 "(b) The Commissioner shall issue a surplus lines license to any qualified holder
2 of a current ~~fire and casualty property~~ broker's or agent's license, but only when the
3 broker or agent has:

- 4 (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;
5 (2) Submitted a completed license application on a form supplied by the
6 Commissioner, and the application has been approved by the
7 Commissioner;
8 (3) Passed a qualifying examination approved by the Commissioner;
9 except that all holders of a license prior to July 11, 1985 shall be
10 deemed to have passed such an examination; and
11 (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17,
12 2004."

13 **PART XI. SEVERABILITY.**

14 **SECTION 11.1** If any section or provision of this act is declared
15 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
16 validity of the act as a whole or any part other than the part so declared to be
17 unconstitutional, preempted, or otherwise invalid.

18 **PART XII. EFFECTIVE DATES.**

19 **SECTION 12.1.** Part I of this act becomes effective January 1, 2009 and
20 applies to policies issued or renewed on or after that date. Part III of this act is effective
21 when it becomes law and applies to violations that occur on or after that date. Parts VI
22 and VII of this act become effective October 1, 2008. The remainder of this act is
23 effective when it becomes law.
24
25
26
27

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 738*

PROPOSED SENATE COMMITTEE SUBSTITUTE H738-CSRG-70 [v.17]

6/23/2008 6:33:18 PM

Short Title: Insurance Changes-AB.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST
COVERAGE; MAKE TECHNICAL CHANGES TO INSURANCE FINANCIAL
PROVISIONS; AMEND THE UNAUTHORIZED INSURER LAWS; MAKE
TECHNICAL CHANGES TO THE RATE EVASION LAW TO CLARIFY THAT IT
APPLIES ONLY TO PRIVATE PASSENGER VEHICLES AND TO ADD A
TERMINATION RESTRICTION CONSISTENT WITH G.S. 58-37-50 TO CLARIFY
THAT THE RATE EVASION LAW APPLIES TO CEDED AND UNCEDED
POLICIES; REVISE MANAGED CARE AND HMO RECORD RETENTION LAWS;
MAKE CHANGES TO THE HEALTH INSURANCE RISK POOL LAWS;
STRENGTHEN PROFESSIONAL EMPLOYER ORGANIZATION PROTECTIONS;
MAKE CHANGES TO THE LAW GOVERNING THE CODE OFFICIALS
QUALIFICATION BOARD; PROHIBIT FREE INSURANCE AND TO MAKE
OTHER MISCELLANEOUS CHANGES.

The General Assembly of North Carolina enacts:

PART I. UNINSURED AND UNDERINSURED MOTORIST COVERAGE.

SECTION 1.1. G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:

"(b) Such owner's policy of liability insurance:

...

- (3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury,

1 sickness or disease, including death, resulting therefrom, in an amount
2 not to be less than the financial responsibility amounts for bodily
3 injury liability as set forth in G.S. 20-279.5 nor greater than one
4 million dollars (\$1,000,000), as selected by the policy owner, with
5 limits equal to the highest limits of bodily injury liability coverage for
6 any one vehicle insured under the policy. The named insured may
7 purchase uninsured motorist bodily injury coverage with greater limits,
8 subject to the limitation that in no event shall uninsured motorist
9 bodily injury coverage limits exceed one million dollars (\$1,000,000)
10 per person and one million dollars (\$1,000,000) per accident. The
11 insurer shall notify the named insured of his or her right to purchase
12 uninsured motorist bodily injury coverage with greater limits, when
13 the policy is issued and renewed, as provided in subsection (m) below.
14 The provisions shall include coverage for the protection of persons
15 insured thereunder who are legally entitled to recover damages from
16 owners or operators of uninsured motor vehicles because of injury to
17 or destruction of the property of such insured, with a limit in the
18 aggregate for all insureds in any one accident of up equal to the highest
19 limits of property damage liability coverage for any one vehicle
20 insured in the owner's policy of liability insurance, and subject, for
21 each insured, to an exclusion of the first one hundred dollars (\$100.00)
22 of such damages. The provision shall further provide that a written
23 statement by the liability insurer, whose name appears on the
24 certification of financial responsibility made by the owner of any
25 vehicle involved in an accident with the insured, that the other motor
26 vehicle was not covered by insurance at the time of the accident with
27 the insured shall operate as a prima facie presumption that the operator
28 of the other motor vehicle was uninsured at the time of the accident
29 with the insured for the purposes of recovery under this provision of
30 the insured's liability insurance policy. The coverage required under
31 this subdivision is not applicable where any insured named in the
32 policy rejects the coverage. An insured named in the policy may select
33 different coverage limits as provided in this subdivision. If the named
34 insured in the policy does not reject uninsured motorist coverage and
35 does not select different coverage limits, the amount of uninsured
36 motorist coverage shall be equal to the highest limit of bodily injury
37 and property damage liability coverage for any one vehicle in the
38 policy. Once the option to reject the uninsured motorist coverage or to
39 select different coverage limits is offered by the insurer, the insurer is
40 not required to offer the option in any renewal, reinstatement,
41 substitute, amended, altered, modified, transfer, or replacement policy
42 unless the named insured makes a written request to exercise a
43 different option. The selection or rejection of uninsured motorist
44 coverage or the failure to select or reject by a named insured is valid

1 and binding on all insureds and vehicles under the policy. Rejection of
2 or selection of different coverage limits for uninsured motorist
3 coverage for policies under the jurisdiction of the North Carolina Rate
4 Bureau shall be made in writing by a named insured on a form
5 promulgated by the Bureau and approved by the Commissioner of
6 Insurance.

7 If a person who is legally entitled to recover damages from the
8 owner or operator of an uninsured motor vehicle is an insured under
9 the uninsured motorist coverage of a policy that insures more than one
10 motor vehicle, that person shall not be permitted to combine the
11 uninsured motorist limit applicable to any one motor vehicle with the
12 uninsured motorist limit applicable to any other motor vehicle to
13 determine the total amount of uninsured motorist coverage available to
14 that person. If a person who is legally entitled to recover damages from
15 the owner or operator of an uninsured motor vehicle is an insured
16 under the uninsured motorist coverage of more than one policy, that
17 person may combine the highest applicable uninsured motorist limit
18 available under each policy to determine the total amount of uninsured
19 motorist coverage available to that person. The previous sentence shall
20 apply only to insurance on nonfleet private passenger motor vehicles
21 as described in G.S. 58-40-10(1) and (2).

22 In addition to the above requirements relating to uninsured motorist
23 insurance, every policy of bodily injury liability insurance covering
24 liability arising out of the ownership, maintenance or use of any motor
25 vehicle, which policy is delivered or issued for delivery in this State,
26 shall be subject to the following provisions which need not be
27 contained therein.

- 28 a. A provision that the insurer shall be bound by a final judgment
29 taken by the insured against an uninsured motorist if the insurer
30 has been served with copy of summons, complaint or other
31 process in the action against the uninsured motorist by
32 registered or certified mail, return receipt requested, or in any
33 manner provided by law; provided however, that the
34 determination of whether a motorist is uninsured may be
35 decided only by an action against the insurer alone. The insurer,
36 upon being served as herein provided, shall be a party to the
37 action between the insured and the uninsured motorist though
38 not named in the caption of the pleadings and may defend the
39 suit in the name of the uninsured motorist or in its own name.
40 The insurer, upon being served with copy of summons,
41 complaint or other pleading, shall have the time allowed by
42 statute in which to answer, demur or otherwise plead (whether
43 the pleading is verified or not) to the summons, complaint or
44 other process served upon it. The consent of the insurer shall

1 not be required for the initiation of suit by the insured against
2 the uninsured motorist: Provided, however, no action shall be
3 initiated by the insured until 60 days following the posting of
4 notice to the insurer at the address shown on the policy or after
5 personal delivery of the notice to the insurer or its agent setting
6 forth the belief of the insured that the prospective defendant or
7 defendants are uninsured motorists. No default judgment shall
8 be entered when the insurer has timely filed an answer or other
9 pleading as required by law. The failure to post notice to the
10 insurer 60 days in advance of the initiation of suit shall not be
11 grounds for dismissal of the action, but shall automatically
12 extend the time for the filing of an answer or other pleadings to
13 60 days after the time of service of the summons, complaint, or
14 other process on the insurer.

- 15 b. Where the insured, under the uninsured motorist coverage,
16 claims that he has sustained bodily injury as the result of
17 collision between motor vehicles and asserts that the identity of
18 the operator or owner of a vehicle (other than a vehicle in which
19 the insured is a passenger) cannot be ascertained, the insured
20 may institute an action directly against the insurer: Provided, in
21 that event, the insured, or someone in his behalf, shall report the
22 accident within 24 hours or as soon thereafter as may be
23 practicable, to a police officer, peace officer, other judicial
24 officer, or to the Commissioner of Motor Vehicles. The insured
25 shall also within a reasonable time give notice to the insurer of
26 his injury, the extent thereof, and shall set forth in the notice the
27 time, date and place of the injury. Thereafter, on forms to be
28 mailed by the insurer within 15 days following receipt of the
29 notice of the accident to the insurer, the insured shall furnish to
30 insurer any further reasonable information concerning the
31 accident and the injury that the insurer requests. If the forms are
32 not furnished within 15 days, the insured is deemed to have
33 complied with the requirements for furnishing information to
34 the insurer. Suit may not be instituted against the insurer in less
35 than 60 days from the posting of the first notice of the injury or
36 accident to the insurer at the address shown on the policy or
37 after personal delivery of the notice to the insurer or its agent.
38 The failure to post notice to the insurer 60 days before the
39 initiation of the suit shall not be grounds for dismissal of the
40 action, but shall automatically extend the time for filing of an
41 answer or other pleadings to 60 days after the time of service of
42 the summons, complaint, or other process on the insurer.

43 Provided under this section the term "uninsured motor vehicle"
44 shall include, but not be limited to, an insured motor vehicle where the

liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of coverage, the insurer making payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of that person against any person or organization legally responsible for the bodily injury for which the payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is that insurance but the insurance company writing the insurance denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of the bodily injury and property damage liability insurance, or the owner of the motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

- a. A motor vehicle owned by the named insured;
- b. A motor vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
- c. A motor vehicle that is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
- d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
- e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any

named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in the motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of the motor vehicle.

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide uninsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and non-commercial motor vehicles shall provide uninsured motorist coverage in accordance with the provisions of this subsection in amounts equal to the highest limits of bodily injury and property damage liability coverage for any one non-commercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher uninsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, non-commercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection.

- (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with a policy that is written at limits that exceed those prescribed by subdivision (2) of this section ~~and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount not to be less than the financial responsibility amounts for bodily injury liability as set forth in G.S. 20-279.5 nor greater than one million dollars (\$1,000,000) as selected by the policy owner, with~~ limits equal to the highest limits of bodily injury liability coverage for any one vehicle insured under the policy. The named insured may purchase underinsured motorist coverage with greater limits, subject to the limitation that in no event shall the underinsured motorist coverage limits exceed one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. The insurer shall notify the named insured of his or her right to purchase underinsured motorist coverage with greater limits, when the policy is issued and renewed, as provided in subsection (m) below. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the

1 applicable limits of underinsured motorist coverage for the vehicle
2 involved in the accident and insured under the owner's policy. For
3 purposes of an underinsured motorist claim asserted by a person
4 injured in an accident where more than one person is injured, a
5 highway vehicle will also be an "underinsured highway vehicle" if the
6 total amount actually paid to that person under all bodily injury
7 liability bonds and insurance policies applicable at the time of the
8 accident is less than the applicable limits of underinsured motorist
9 coverage for the vehicle involved in the accident and insured under the
10 owner's policy. Notwithstanding the immediately preceding sentence,
11 a highway vehicle shall not be an "underinsured motor vehicle" for
12 purposes of an underinsured motorist claim under an owner's policy
13 insuring that vehicle ~~if~~ unless the owner's policy insuring that vehicle
14 provides underinsured motorist coverage with limits that are ~~less than~~
15 ~~or equal to~~ greater than that policy's bodily injury liability limits. For
16 the purposes of this subdivision, the term "highway vehicle" means a
17 land motor vehicle or trailer other than (i) a farm-type tractor or other
18 vehicle designed for use principally off public roads and while not
19 upon public roads, (ii) a vehicle operated on rails or crawler-treads, or
20 (iii) a vehicle while located for use as a residence or premises. The
21 provisions of subdivision (3) of this subsection shall apply to the
22 coverage required by this subdivision. Underinsured motorist coverage
23 is deemed to apply when, by reason of payment of judgment or
24 settlement, all liability bonds or insurance policies providing coverage
25 for bodily injury caused by the ownership, maintenance, or use of the
26 underinsured highway vehicle have been exhausted. Exhaustion of that
27 liability coverage for the purpose of any single liability claim
28 presented for underinsured motorist coverage is deemed to occur when
29 either (a) the limits of liability per claim have been paid upon the
30 claim, or (b) by reason of multiple claims, the aggregate per
31 occurrence limit of liability has been paid. Underinsured motorist
32 coverage is deemed to apply to the first dollar of an underinsured
33 motorist coverage claim beyond amounts paid to the claimant under
34 the exhausted liability policy.

35 In any event, the limit of underinsured motorist coverage
36 applicable to any claim is determined to be the difference between the
37 amount paid to the claimant under the exhausted liability policy or
38 policies and the limit of underinsured motorist coverage applicable to
39 the motor vehicle involved in the accident. Furthermore, if a claimant
40 is an insured under the underinsured motorist coverage on separate or
41 additional policies, the limit of underinsured motorist coverage
42 applicable to the claimant is the difference between the amount paid to
43 the claimant under the exhausted liability policy or policies and the
44 total limits of the claimant's underinsured motorist coverages as

1 determined by combining the highest limit available under each policy;
2 provided that this sentence shall apply only to insurance on nonfleet
3 private passenger motor vehicles as described in G.S. 58-40-15(9) and
4 (10). The underinsured motorist limits applicable to any one motor
5 vehicle under a policy shall not be combined with or added to the
6 limits applicable to any other motor vehicle under that policy.

7 An underinsured motorist insurer may at its option, upon a claim
8 pursuant to underinsured motorist coverage, pay moneys without there
9 having first been an exhaustion of the liability insurance policy
10 covering the ownership, use, and maintenance of the underinsured
11 highway vehicle. In the event of payment, the underinsured motorist
12 insurer shall be either: (a) entitled to receive by assignment from the
13 claimant any right or (b) subrogated to the claimant's right regarding
14 any claim the claimant has or had against the owner, operator, or
15 maintainer of the underinsured highway vehicle, provided that the
16 amount of the insurer's right by subrogation or assignment shall not
17 exceed payments made to the claimant by the insurer. No insurer shall
18 exercise any right of subrogation or any right to approve settlement
19 with the original owner, operator, or maintainer of the underinsured
20 highway vehicle under a policy providing coverage against an
21 underinsured motorist where the insurer has been provided with
22 written notice before a settlement between its insured and the
23 underinsured motorist and the insurer fails to advance a payment to the
24 insured in an amount equal to the tentative settlement within 30 days
25 following receipt of that notice. Further, the insurer shall have the
26 right, at its election, to pursue its claim by assignment or subrogation
27 in the name of the claimant, and the insurer shall not be denominated
28 as a party in its own name except upon its own election. Assignment or
29 subrogation as provided in this subdivision shall not, absent contrary
30 agreement, operate to defeat the claimant's right to pursue recovery
31 against the owner, operator, or maintainer of the underinsured highway
32 vehicle for damages beyond those paid by the underinsured motorist
33 insurer. The claimant and the underinsured motorist insurer may join
34 their claims in a single suit without requiring that the insurer be named
35 as a party. Any claimant who intends to pursue recovery against the
36 owner, operator, or maintainer of the underinsured highway vehicle for
37 moneys beyond those paid by the underinsured motorist insurer shall
38 before doing so give notice to the insurer and give the insurer, at its
39 expense, the opportunity to participate in the prosecution of the claim.
40 Upon the entry of judgment in a suit upon any such claim in which the
41 underinsured motorist insurer and claimant are joined, payment upon
42 the judgment, unless otherwise agreed to, shall be applied pro rata to
43 the claimant's claim beyond payment by the insurer of the owner,

operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for those injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of notice, the underinsured motorist insurer shall have the right to appear in defense of the claim without being named as a party therein, and without being named as a party may participate in the suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in the action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, before approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in the action on his separate behalf. If an underinsured motorist insurer, following the approval of the application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, the insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to the owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

As consideration for payment of policy limits by a liability insurer on behalf of the owner, operator, or maintainer of an underinsured motor vehicle, a party injured by an underinsured motor vehicle may execute a contractual covenant not to enforce against the owner, operator, or maintainer of the vehicle any judgment that exceeds the policy limits. A covenant not to enforce judgment shall not preclude the injured party from pursuing available underinsured motorist benefits, unless the terms of the covenant expressly provide otherwise, and shall not preclude an insurer providing underinsured motorist coverage from pursuing any right of subrogation.

~~The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.~~

~~Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.~~

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and non-commercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one non-commercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, non-commercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection."

SECTION 1.2. G.S. 20-279.21 is amended by adding the following new subsections to read:

"(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured, when the policy is issued and renewed, that the named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. An insurer shall be deemed to

1 have given reasonable notice if it includes the following or substantially similar
2 language on the policy's original and renewal declarations pages or in a separate notice
3 accompanying the renewal declarations pages in at least 10 point type:

4 'NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY
5 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE
6 WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND
7 ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE
8 PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE
9 NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY
10 MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD
11 CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR
12 OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD
13 ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED
14 UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES.'

15 (n) Nothing in this section shall be construed to provide greater amounts of
16 uninsured or underinsured motorist coverage in a liability policy than the insured has
17 purchased from the insurer under this section.

18 (o) An insurer that fails to comply with subsection (m) of this section is subject
19 to a civil penalty under G.S. 58-2-70."

20 **PART II. INSURANCE COMPANY FINANCIAL SOLVENCY PROVISIONS.**

21 **SECTION 2.1.** G.S. 58-5-50 reads as rewritten:

22 **"§ 58-5-50. Deposits of foreign life insurance companies.**

23 In addition to other requirements of ~~Articles 1 through 64~~ of this Chapter, all foreign
24 life insurance companies shall deposit securities, as specified in G.S. 58-5-20, ~~having~~
25 that have a market value of four hundred thousand dollars (\$400,000) as a prerequisite
26 of doing business in this State. All foreign life insurance companies shall deposit an
27 additional two hundred thousand dollars (\$200,000) where such companies cannot show
28 three years of net ~~operational gains prior to admission.~~ income before being licensed in
29 this State."

30 **SECTION 2.2.** The title of G.S. 58-10-145 reads as rewritten:

31 **"§ 58-10-145. ~~Monoline~~ Monoline requirement for mortgage guaranty insurers."**

32 **SECTION 2.3** G.S. 58-7-15(17) reads as rewritten:

33 "(17) "Credit insurance," meaning indemnifying merchants or other persons
34 extending credit against loss or damage resulting from the nonpayment
35 of debts owed to them; and including the incidental power to acquire
36 and dispose of debts so insured, and to collect any debts owed to the
37 insurer or to any person so insured by the insurer; and also including
38 insurance where the debt is secured by either (a) a junior lien on real
39 estate or (b) where the debt is secured by a first lien on real estate as
40 long as (i) the purpose of the debt being insured is not for the purchase
41 of the real estate and the insurance is limited to twenty-five percent
42 (25%) of the insurer's aggregate insured risk outstanding, before
43 reinsurance ceded or assumed or (ii) the insurance is not included
44 within the definition of mortgage guaranty insurance."

SECTION 2.4. G.S. 58-5-71 reads as rewritten:

"§ 58-5-71. Liens of policyholders; subordination.

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims. 'Special deposit claims' has the same meaning set forth in G.S. 58-30-10(19).'"

SECTION 2.5. G.S. 58-5-55 reads as rewritten:

"§ 58-5-55. Deposits of capital and surplus by domestic insurance companies.

(a) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic stock insurance companies shall deposit their required statutory capital with the ~~Department~~ Commissioner. Such deposits shall be under the exclusive control of the ~~Department~~ Commissioner for the protection of policyholders.

(b) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic mutual insurance companies shall deposit at least fifty percent (50%) of their minimum required surplus with the ~~Department~~ Commissioner, with the amount of the deposit to be determined by the Commissioner. Such deposits shall be under the exclusive control of the ~~Department~~ Commissioner for the protection of policyholders.

(c) Deposits fulfilling the requirements of this section shall comprise:

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

SECTION 2.6. G.S. 58-7-75 is amended by adding two new subdivisions to read:

"§ 58-7-75. Amount of capital and/or surplus required; impairment of capital or surplus.

...

(1a) Non-stock Life Insurance Companies. - A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000) and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional surplus. Every such corporation shall at all times thereafter maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000). Provided that, any such corporation may conduct the kind of insurance authorized for stock accident and health insurance companies, as set out in G.S. 58-7-15(3)a and b, where its charter so permits, and only as long as it maintains a minimum surplus equal to the sum of the minimum surplus requirements of this subdivision and the minimum surplus requirements of subdivision (2a) of this section.

...

(2a) Non-stock Accident and Health Insurance Companies.

- a. A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in G.S. 58-7-15(3)a, when it has paid-in initial surplus of at least one million dollars (\$1,000,000). Every such corporation shall at all times thereafter maintain a minimum surplus of at least five hundred thousand dollars (\$500,000).
- b. Any non-stock corporation organized under the provisions of sub-subdivision a of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in G.S. 58-7-15(3)b, if it has a paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000). Every such corporation shall at all times maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000)."

PART III. UNAUTHORIZED INSURER AMENDMENTS.

SECTION 3.1. The title for G.S. 58-28-5 reads as rewritten:

"§ 58-28-5. Transacting business without ~~certificate of authority~~ a license prohibited; exceptions."

SECTION 3.2. G.S. 58-28-5(a) reads as rewritten:

"(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in ~~G.S. 58-28-10~~, G.S. 58-28-13 without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and

delivered in a state in which the company was authorized to transact business.

- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

SECTION 3.3. G.S. 58-28-40(a) reads as rewritten:

"(a) Any act of entering into a contract of insurance as an insurer or transacting insurance business in this State, as set forth in ~~G.S. 58-28-10~~ G.S. 58-28-12 by an unauthorized, foreign or alien company, shall be equivalent to and shall constitute an appointment by such company of the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of G.S. 58-28-5, and any of said acts shall be a signification of its agreement that any such process against it, which is so served, shall be of the same legal force and validity as if in fact served upon the company."

SECTION 3.4. Article 28 of Chapter 58 of the General Statutes of North Carolina is amended by adding three new sections to read:

"§ 58-28-12. Transacting insurance business in this State.

Definitions. -- As used in this section, G.S. 58-28-13, and G.S. 58-28-14:

- (1) "Admitted insurer" means an insurer that is licensed to write insurance in this State.
- (2) "Kind of insurance" means one of the types of insurance specified in G.S. 58-7-15.
- (3) "Nonadmitted insurer" means an insurer that is not licensed to write insurance in this State.
- (4) "Transacting insurance business" or "transact insurance business" means:

- a. The making of or proposing to make, as an insurer, an insurance contract.
- b. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
- c. The solicitation, taking, or receiving of an application for insurance.
- d. The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for a contract of insurance or any part of the contract of insurance.
- e. The issuance or delivery in this State of a contract of insurance to a resident of this State or to a person authorized to do business in this State.
- f. The solicitation, negotiation, procurement, effectuation, or renewal of a contract of insurance.
- g. The dissemination of information as to coverage or rates; forwarding of an application; delivery of a contract of insurance; inspection of a risk; the fixing of rates; the investigation or adjustment of a claim or loss; the transaction of matters after effectuation of a contract of insurance and arising out of the contract; or any other manner of representing or assisting a person or insurer in transacting insurance business with respect to properties, risks, or exposures located or to be performed in this State.
- h. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning this Chapter.
- i. The offering of insurance or the transacting of insurance business.
- j. Offering an agreement or contract which purports to alter, amend, or void coverage of an insurance contract.
- k. The transaction of any matters before or after the execution of contracts of insurance in contemplation of or arising out of the execution.
- l. Maintaining any agency or office in this State where any acts in furtherance of an insurance business are transacted, including the execution of contracts of insurance with citizens of this State or any other state.
- m. Maintaining files or records of contracts of insurance in this State.

“§58-28-13. Placement of insurance business

(a) An insurer shall not transact insurance business in this State unless it is an admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

1 (b) A person shall not transact insurance business or in this State directly or
2 indirectly act as agent for, or otherwise represent or aid on behalf of another, a
3 nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of
4 insurance, or renewals of insurance; forwarding of applications; delivery of policies or
5 contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or
6 losses; collection or forwarding of premiums; or in any other manner represent or assist
7 the insurer in transacting insurance business.

8 (c) A person who represents or aids a nonadmitted insurer in violation of this
9 section is subject to penalties or restitution, or both, as set forth in this section.

10 (d) This section does not prohibit employees, officers, directors, or partners of a
11 commercial insured from acting in the capacity of an insurance manager or buyer in
12 placing insurance on behalf of the employer, provided that the person's compensation is
13 not based on buying insurance.

14 (e) The venue of an act committed by mail or any other medium is at the point
15 where the matter transmitted by mail or other medium is delivered or issued for delivery
16 or takes effect

17 (f) The remedies prescribed in this section are not exclusive. Penalties may also be
18 assessed under Article 63 of this Chapter or G.S. 58-2-161, or both.

19 (g) If the Commissioner finds a violation of this section, the Commissioner may
20 order the payment of a monetary penalty after considering the factors in G.S. 58-28-14;
21 or petition the Superior Court of Wake County for an order directing payment of
22 restitution as provided in subsection (i) of this section; or both. The monetary penalty
23 shall not exceed five thousand dollars (\$5,000) for the first offense and shall not exceed
24 ten thousand dollars (\$10,000) for each succeeding offense. Each day during which a
25 violation occurs constitutes a separate violation. The clear proceeds of the penalty shall
26 be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S.
27 115C-457.2. Payment of the civil penalty under this section shall be in addition to
28 payment of any other penalty for a violation of the criminal laws of this State.

29 (h) Upon petition of the Commissioner the Superior Court of Wake County may
30 order the person who committed a violation specified in this section to make restitution
31 in an amount that would make whole any person harmed by the violation. The petition
32 may be made at any time and also in any appeal of any order issued by the
33 Commissioner.

34 (i) Restitution to the Department for extraordinary administrative expenses incurred
35 in the investigation and hearing of the violation may also be ordered by the court in such
36 amount that would reimburse the Department for the expenses.

37 (j) Nothing in this section prevents the Commissioner from negotiating a mutually
38 acceptable agreement with any person as to any civil penalty or restitution.

39 (k) The Attorney General of the State of North Carolina at the request of and upon
40 information from the Commissioner shall initiate a civil action in behalf of the
41 Commissioner in any county of the State in which a violation under this section occurs
42 to recover the penalty provided. Service of process upon the nonadmitted insurer shall
43 be made under G.S. 58-28-40.

44 **“§ 58-28-14. Monetary penalty; factors to be considered.**

1 In determining the amount of the penalty under G.S. 58-28-13, the Commissioner
2 shall consider:

- 3 (1) The amount of money that inured to the benefit of the violator as a result
4 of the violation,
- 5 (2) Whether the violation was committed willfully,
- 6 (3) The prior record of the violator in complying or failing to comply with
7 laws, rules, or orders applicable to the violator.
- 8 (4) The failure of the violator to provide timely and complete responses to
9 the Department's inquiries about the violator's insurance activities in
10 North Carolina
- 11 (5) The extent and degree to which the violator marketed its insurance
12 product in this State
- 13 (6) The extent to which the violator's marketing materials, including fax
14 solicitations, Internet websites, circulars, or other forms of
15 advertisement or solicitations through any medium, were deceptive or
16 misleading to residents of this State.
- 17 (7) The number of residents of this State who enrolled in the violator's
18 insurance plan.
- 19 (8) The number of policies and amount of insurance coverage issued by the
20 violator to residents of this State.
- 21 (9) The failure of the violator to promptly refund premiums and other
22 consideration paid by residents of this State for insurance coverage
23 issued by the violator upon requests by the residents of this State or the
24 Department.
- 25 (10) The extent and degree of harm to residents of this State. In assessing
26 the extent and degree of harm, the Commissioner shall consider,
27 among other things, the amount of premiums and other consideration
28 paid by residents of this State for coverage issued by the violator, the
29 failure of the violator to pay claims made by residents of this State,
30 and number and dollar amount of claims made by residents of this
31 State that the violator has failed to pay.
- 32 (11) Whether the violator has a prior record of violating this Article or the
33 unauthorized insurance laws of any other state. "Prior record"
34 includes final administrative orders issued by the Commissioner or
35 insurance regulator of any other state; federal or state criminal
36 convictions, including pleas of guilty or nolo contendere; civil
37 judgments; and written settlement agreements of state administrative
38 proceedings, state or federal criminal proceedings, or civil lawsuits
39 against the violator or any entity of which the violator was either a
40 principal or owner."

41 **SECTION 3.5.** G.S. 58-28-10 is repealed.

42 **PART IV. RATE EVASION TECHNICAL AMENDMENTS.**

43 **SECTION 4.1.** G.S. 20-52(a)(4) reads as rewritten:

- (4) A statement that the owner is an eligible risk for insurance coverage as defined in G.S. 58-37-1. G.S. 58-37-1(4a).

SECTION 4.2. G.S. 58-36-85(b) reads as rewritten:

"(b) Termination Restrictions. – An insurer shall not terminate a policy for a reason that is not specified in G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g). G.S. 58-2-164(g), G.S. 58-36-65(g), or G.S. 58-37-50. A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

An insurer is not required to send a written termination notice if any of the following applies:

- (1) The insurer has manifested its willingness to renew the policy by issuing or offering to issue a renewal policy, a certificate, or other evidence of renewal.
- (2) The insurer has manifested its willingness to renew the policy by any means not described in subdivision (1) of this subsection, including mailing a premium notice or expiration notice by first class mail to the named insured and the failure of the insured to pay the required premium on or before the premium due date.
- (3) A named insured has given written notification to the insurer or its agent that the named insured wants the policy to be terminated."

PART V. MANAGED CARE RECORD RETENTION AMENDMENTS AND HMO TECHNICAL AMENDMENT.

SECTION 5.1. G.S. 58-50-61(n) reads as rewritten:

"(n) Maintenance of Records. – Every insurer and URO shall maintain records of each review performed and each appeal received or reviewed, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. These records shall be retained by the insurer and URO for a period of three-five years or or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later."

SECTION 5.2. G.S. 58-50-62(d) reads as rewritten:

"(d) Maintenance of Records. – Every insurer shall maintain records of each grievance received and the insurer's review of each grievance, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. The insurer shall retain these records for three-five years or or, for domestic companies, until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later."

SECTION 5.3. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Data Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the ~~Health Plan Employer Data and Information Set (HEDIS)~~ Healthcare Effectiveness Data and Information Set guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the ~~HEDIS-Healthcare Effectiveness and Information Set~~ format."

PART VI. HEALTH INSURANCE RISK POOL AMENDMENTS.

SECTION 6.1. G.S. 58-50-180(c) reads as rewritten:

"(c) The initial appointments by the Governor and the General Assembly upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve a term of three years. The initial appointments by the Commissioner under sub-subdivisions a., b., and d. of subdivision (b)(3) of this section shall be for a term of two years. The initial appointments by the Commissioner under sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term of one year. All succeeding appointments shall be for terms of three years. Members shall not serve for more than two successive terms.

A Board member's term shall continue until the member's successor is appointed by the original appointing authority. Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur. A Board member may be removed by the appointing authority for cause.

The Board shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. Board members shall receive travel allowances under ~~G.S. 138-6~~ G.S. 138-5 when traveling to and from meetings of the ~~Board, Board or for official business of the Pool,~~ but shall not receive any ~~subsistence allowance or per diem~~ under ~~G.S. 138-5~~ subdivision (a)(1) of that section."

SECTION 6.2. G.S. 58-50-180(e)(1) reads as rewritten:

"(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

- (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the approval of the Executive Director ~~in collaboration with~~ acting upon

the approval or authorization of the Board, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions."

SECTION 6.3. G.S. 58-50-185(a) reads as rewritten:

"(a) The Executive Director, ~~in collaboration with the~~ approval or authorization of the Board, shall select through a competitive bidding process one or more insurers to administer the Pool. The Executive Director shall evaluate bids submitted based on criteria established by the Board. The criteria shall allow for the comparison of information about each bidding administrator and selection of a Pool Administrator based on at least the following:

- (1) Proven ability to handle health insurance coverage to individuals.
- (2) Efficiency and timeliness of the claim processing procedures.
- (3) Estimated total charges for administering the Pool.
- (4) Ability to apply effective cost containment programs and procedures and to administer the Pool in a cost-efficient manner.
- (5) Financial condition and stability.
- (6) Evidence of authority to provide third-party administrative services in North Carolina."

SECTION 6.4 G.S. 58-50-195(d) reads as rewritten:

"(d) Coverage under the Pool shall cease:

- (1) On the date an individual is no longer a resident of this State.
- (2) On the date an individual requests coverage to end.
- (3) Upon the death of the covered individual.
- (4) On the date State law requires cancellation of the Pool policy.
- (5) At the option of the Pool, 30 days after the Pool makes any inquiry concerning the individual's eligibility or residence to which the individual does not reply.
- (6) Because the individual has failed to make the payments required under this Part.
- (7) Because the individual has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage."

SECTION 6.5. G.S. 58-50-210 reads as rewritten:

"§ 58-50-210. Preexisting conditions.

(a) Except as otherwise provided by law, Pool coverage shall exclude charges or expenses incurred during the first 12 months following the effective date of coverage as to any condition for which medical advice, care, or treatment was recommended or received as to such conditions during the 12-month period immediately preceding the effective date of coverage, except that no preexisting condition exclusion shall be applied to a federally defined eligible individual ~~individual~~ or an individual who is eligible for the pool because of his or her eligibility for the credit for health insurance costs under the Trade adjustment Assistance Reform Act of 2002, section 35 of the Internal Revenue Code of 1986, pursuant to G.S. 58-50-195(a)(6).

(b) ~~Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:~~

(1) ~~Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and~~

(2) ~~The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.~~

(c) The period of any preexisting condition exclusion shall be reduced by the aggregate of the periods of creditable coverage, if any, applicable as of the enrollment date. Credit for having satisfied some or all of the preexisting condition waiting period under previous creditable coverage, as defined in G.S. 58-51-17(a)(1), shall be provided in accordance with G.S. 58-51-17."

PART VII. PEO AMENDMENTS.

SECTION 7.1. The title of G.S. 58-89A-50 reads as rewritten:

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

SECTION 7.2. 58-89A-50(a) reads as rewritten:

"(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner in the an amount of one hundred thousand dollars (\$100,000) in favor of the State of North Carolina equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require."

SECTION 7.3. G.S. 58-89A-10 is repealed.

SECTION 7.4. G.S. 58-89A-105 reads as rewritten:

"§ 58-89A-105. Employee benefit plans; required disclosure; other reports.

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. Any health insurance plan sponsored and maintained by a licensee shall only be fully insured by one of the following:

(1) A licensed insurance company that is authorized to write accident and health insurance, as defined in G.S. 58-7-15(3).

(2) A service corporation organized and licensed under Article 65 of this Chapter.

(3) A health maintenance organization organized and licensed under Article 67 of this Chapter.

(b) ~~A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.~~

(c) ~~If a licensee offers to its assigned employees any health benefit plan that is not fully insured by an authorized insurer, the plan shall:~~

(1) ~~Utilize a third-party administrator licensed or registered to do business in this State;~~

(2) ~~Hold all plan assets, including participant contributions, in a trust account; and~~

(3) ~~Provide sound reserves for the plan as determined using generally accepted actuarial standards.~~

(d) ~~For purposes of this section, a "health benefit plan that is not fully insured by an authorized insurer" includes any arrangement except an arrangement under which an insurance company licensed to write insurance in this State has issued an insurance policy that covers all of the obligations of the health benefit plan. For the purposes of this section, a health insurance plan is fully insured only if all of the benefits provided under the plan are covered by an approved policy issued by one or more of the entities specified in subsection (a) of this section. A health insurance plan is not fully insured if the plan is any form of stop-loss insurance or any other form of reinsurance.~~

(e) Existing licensees shall comply with subsection (a) of this section by October 1, 2009. Before October 1, 2009, if an existing licensee sponsors and maintains any health insurance plan that is not fully insured by one or more of the entities specified in subsection (a) of this section, the licensee shall do all of the following:

(1) Use a third party administrator licensed or registered under Article 56 of this Chapter.

(2) Hold all plan assets, including participant contributions, in a trust account.

(3) Provide sound reserves for the plan as determined by generally accepted actuarial standards."

PART VIII. CODE OFFICIALS QUALIFICATION BOARD AMENDMENTS.

SECTION 8.1. G.S. 143-151.13(a) reads as rewritten:

"(a) ~~No person may shall engage in Code enforcement pursuant to under this Article unless he that person possesses one of the following types of certificates, currently valid, issued by the Board attesting to his that person's qualifications to hold such position: engage in Code Enforcement: (i) a standard certificate; (ii) a limited certificate provided for in subsection (e);(c) of this section; or (iii) a probationary certificate provided for in subsection (d).(d) of this section. To obtain a standard certificate, a person must pass an examination, as prescribed by the Board, which Board or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina State Building Code and administrative procedures required to enforce the Code. for Code enforcement. The Board shall may issue a standard certificate of qualification to each person who successfully completes the examination authorizing the person named therein examination. The certificate authorizes that person to engage in Code enforcement and to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board."~~

SECTION 8.2. G.S. 143-151.16(d) reads as rewritten:

"(d) ~~The Board may establish and collect a fee to be paid by each applicant for examination in an amount not to exceed one hundred twenty five dollars (\$125.00). In addition, the Board may establish and collect a fee to be paid by each applicant applying for a review of the applicant's examination. The amount of the examination review fee~~

shall not exceed fifty dollars (\$50.00). Examination and examination review fees may be paid directly to approved testing services that maintain regional facilities for the purpose of administering the Board's examinations. The Board may contract with persons for the development and administration of the examinations required by G.S. 143-151.13(a), for course development related to the examinations, for review of a particular applicant's examination, and for other related services. The person with whom the Board contracts may charge applicants a reasonable fee for the costs associated with the development and administration of the examinations, for course development related to the examinations, for review of the applicant's examinations and for other related services. The fee shall be agreed to by the Board and the other contracting party. The amount of the fee under this subsection shall not exceed one hundred seventy-five dollars (\$175.00). Contracts for the development and administration of the examinations, for course development related to the examinations, and for review of examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 3D of Chapter 147 of the General Statutes."

PART IX. PROHIBITION AGAINST FREE INSURANCE.

SECTION 9.1. Chapter 66 of the General Statutes is amended by adding a new Article 44 to read:

"Article 44.

"Free Insurance.

"§ 66-380. Definitions.

As used in this Article:

- (1) "Consumer goods" means goods that are used primarily for personal, family, or household purposes. For the purposes of this Article, consumer goods do not include automobiles or residences.
- (2) "Free insurance" means any of the following:
 - a. Insurance for which no identifiable or additional charge is made to the purchaser or lessee of consumer goods or services directly or indirectly connected with the purchase of consumer goods.
 - b. Insurance for which an identifiable or additional charge is made in an amount less than the cost of such insurance as to the seller, lessor, or other person other than the insurer providing the insurance.

"§ 66-381. Free insurance.

No person shall advertise, offer, or provide free insurance for damage, loss or theft as an inducement to the purchase, sale, or rental of consumer goods or services directly or indirectly connected with the purchase of consumer goods.

"§ 66-382. Unfair trade practice.

A violation of G.S. 66-381 constitutes an unfair trade practice under G.S. 75-1.1."

PART X. MISCELLANEOUS CHANGES.

SECTION 10.1. G.S. 58-21-65(b) reads as rewritten:

1 "(b) The Commissioner shall issue a surplus lines license to any qualified holder
2 of a current ~~fire and casualty property~~ broker's or agent's license, but only when the
3 broker or agent has:

4 (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;

5 (2) Submitted a completed license application on a form supplied by the
6 Commissioner, and the application has been approved by the
7 Commissioner;

8 (3) Passed a qualifying examination approved by the Commissioner;
9 except that all holders of a license prior to July 11, 1985 shall be
10 deemed to have passed such an examination; and

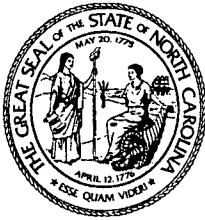
11 (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17,
12 2004."

13 **PART XI. SEVERABILITY.**

14 **SECTION 11.1** If any section or provision of this act is declared
15 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
16 validity of the act as a whole or any part other than the part so declared to be
17 unconstitutional, preempted, or otherwise invalid.

18 **PART XII. EFFECTIVE DATES.**

19 **SECTION 12.1.** Part I of this act becomes effective January 1, 2009 and
20 applies to policies issued or renewed on or after that date. Part III of this act is effective
21 when it becomes law and applies to violations that occur on or after that date. Parts VI
22 and VII of this act become effective October 1, 2008. The remainder of this act is
23 effective when it becomes law.
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25
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27



HOUSE BILL 738: Insurance Amendments-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 23, 2008
Introduced by:	Reps. Goforth, Holliman	Summary by:	Tim Hovis
Version:	PCS to First Edition H738-CSR-70[v.17]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute replaces the original bill, Custodial Agreements & Clearing Corp. Act, with various amendments to the law governing insurance including uninsured and underinsured motorist coverage, insurer financial requirements, unauthorized insurers, motor vehicle rate evasion, the NC Health Insurance Risk Pool, Professional Employer Organizations, Building Code Officials Qualification Board and other insurance related changes.*

BILL ANALYSIS:

Part I. Uninsured and Underinsured Motorist Coverage

Under current law, G.S. 20-279.21 requires motor vehicle liability policies to include uninsured and underinsured coverage in an amount not to be less than the minimum financial responsibility amounts required for bodily injury liability nor greater than \$1,000,000. The minimum amounts required for bodily injury are \$30,000 for injury or death to one person and a total of \$60,000 for injury or death to two or more persons. **However, notwithstanding this language which would seem to require uninsured and underinsured coverage, an insured may reject this coverage or select different coverage amounts in writing.**

Section 1 of the Proposed Committee Substitute for House Bill 738 would require motor vehicle liability policies to include uninsured motorist coverage equal to the highest limits of bodily injury liability coverage and property damage liability coverage, and underinsured coverage equal to the highest limits of bodily injury liability coverage, for any for any one vehicle insured under the policy. The PCS provides that the named insured may purchase uninsured and underinsured bodily injury coverage with greater limits. However, uninsured and underinsured bodily injury coverage limits may not exceed \$1,000,000 per person and \$1,000,000 per accident. An insurer must notify the named insured of his or her right to purchase uninsured and underinsured bodily injury coverage with greater limits upon issuance and renewal of the policy. Insurers failing to provide notice as required by this section shall be subject to a civil penalty.

Section 1 deletes current language allowing an insured to reject uninsured and underinsured motorists coverage.

Section 1 also provides that no policy applicable solely to commercial vehicles or fleet vehicles is required to provide mandatory uninsured or underinsured motorists.

Section 1.2 adds several new subsections to G.S. 20-279.21 including the following: (1) requires notice to an insured of his or her right to purchase uninsured or underinsured motorist coverage at greater than the mandatory limits (as provided in section 1 of the PCS); and (2) provides that the statute shall not be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than purchased by the insured.

House Bill 738

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Part 11. Insurance Company Financial Solvency Provisions

Sections 2.1 through 2.5 make technical changes.

Section 2.6 would authorize non-stock companies (non-profits) to organize as life insurance and accident and health insurance companies. The bill would require non-stock companies to meet higher minimum surplus requirements than stock companies. Surplus amounts include:

- Non-stock life: \$1.5M initial surplus and maintain a surplus of \$750K. These companies may insure annuities without additional surplus and may offer accident and health insurance if they meet minimum requirements for both non-stock life and non-stock accident and health.
- Non-stock accident and health: \$1M initial surplus and maintain a surplus of \$500K. These companies may also offer disability insurance if they have an initial surplus of \$1M and maintain a surplus of \$750K.

Part III. Unauthorized Insurer Amendments

Sections 3.1 through 3.3 make technical and conforming changes.

Section 3.4 adds three new sections to the General Statutes to do the following:

- New G.S. 58-28-12 redefines "transacting insurance business"
- New G.S. 58-28-13 provides that only admitted insurers may transact business in the State and increases the maximum monetary penalty from \$5,000 per offense to \$5,000 for the first offense and \$10,000 for each succeeding offense
- New G.S. 58-28-14 sets out factors to be considered when determining monetary penalties under the new G.S. 58-28-13.

Section 3.5 repeals the existing statute, G.S. 58-28-10, governing the unauthorized transaction of business.

Part IV. Rate Evasion Technical Amendments

Section 4.1 clarifies that the Division is only required to get a statement of eligible risk from the owner of a nonfleet private passenger motor vehicle. Owners of commercial motor vehicles are not required to provide a statement of eligible risk.

Section 4.2 makes a technical change clarifying that an insurer may terminate a nonfleet private passenger motor vehicle policy if an insured provides false and misleading information or if the insured is no longer an eligible risk.

Part V. Managed Care Record Retention Amendments and HMO Technical Amendment

Section 5.1 would require health insurers and utilization review organizations (UROs) to maintain records for a period of five years, not three years as required under current law. Domestic companies are required to keep their records for five years or until the Commissioner has adopted a final general examination report for a specific calendar year, whichever is later. This section reflects a 2007 change increasing the period for company examinations from three years to five years.

Section 5.2 makes a technical change.

House Bill 738

Page 3

Part VI. Health Insurance Risk Pool Amendments

Section 6.1 changes the statutory reference for travel allowances for N.C. Health Insurance Risk Pool Board members from G.S. 138-6 governing State employees to G.S. 138-5 governing members of State Boards. Health Insurance Risk Pool Board members are not State employees.

This section also amends current law to provide that Board members may receive a subsistence allowance under G.S. 138-5.

Section 6.2 and 6.3 provide that the Executive Director may enter into contracts and may select a Pool administrator with "the approval or authorization of the Board." Under current law, the Executive Director may act "in collaboration with" the Board.

Section 6.4 provides that the Pool coverage shall cease if a covered individual commits fraud or makes an intentional misrepresentation of material fact under the coverage terms.

Section 6.5 provides that individuals eligible for coverage in the under the federal Trade Adjustment Assistance Reform Act of 2002 (G.S. 58-50-195(a)(6)) are not subject to the pre-existing condition exclusion. This language is required for Pool coverage to qualify for the Health Care Tax Credit under federal law.

This section also repeals G.S. 58-50-210(b) and adds a new subsection (c) to allow credit under the preexisting condition waiting period for periods of prior creditable coverage for individuals who are eligible for the Pool even if termination of that coverage was voluntary. Subsection (b) allows credit for prior coverage only if that coverage was involuntarily terminated. The Board believes subsection (b) conflicts with provisions in the Act that allows persons to join the Pool who have current coverage that is more expensive than Pool coverage.

Part VII. PEO Amendments

Section 7.1 makes a technical change.

Section 7.2 would amend the Professional Employer Organization (PEO) Act to make changes to the deposit amount required of PEO license applicants. Under current law, applicants are required to file a surety bond in the amount of \$100,000. This section would require the bond to equal 5% of the prior year's total State wages, benefits, workers compensation premiums and unemployment compensation contributions, but not greater than \$500,000. The bond can be a greater amount in the discretion of the Commissioner.

Section 7.3 repeals G.S. 58-89A-10 which creates the PEO Advisory Council.

Section 7.4 would require all PEO health insurance plans employee benefit plans to be fully insured by a licensed insurance company, a medical service corporation (BC&BS), or a health maintenance organization. This section would delete language authorizing PEOs to self-insure employee benefit plans. There are currently 4 PEOs in the State that self insure.

Existing licensees are required to comply with this section by October 1, 2009. Prior to that time, the licensee offering a health plan that is not fully insured must comply with current law requiring that the plan utilize a licensed third party, hold all plan assets in a trust account, and provide sound reserves for the plan.

Part VIII. Code Officials Qualification Board Amendments

Section 8.1 makes technical changes and references a change made in Section 8.2 of the PCS.

House Bill 738

Page 4

Section 8.2 would authorize the Code Officials Qualification Board to contract with persons for the development and administration of examinations, course development, and examination review. The contracting party may charge a reasonable fee to applicants for the costs of the services in an amount agreed to by the Board and the contracting party. However, the fee shall not exceed for \$175.00. (This is the same cap under current law for examination and examination review fees.) Contracts under this section are exempted from State Purchase and Contract requirements.

Part IX. Prohibition Against Free Insurance

Section 9.1 would create a new Article 44 of Chapter 66 of the General Statutes to prohibit the advertising, offer or provision of free insurance for damage, loss or theft as an inducement to purchase, sale, or rent consumer goods. "Consumer goods" is defined to mean goods for personal family, or household purposes other than automobiles or residences. "Free insurance" means insurance for which no identifiable charge or additional charge is made or for which an identifiable or additional charge is made that is less than the cost of the insurance to the seller, lessor, or other person, other than the insurer providing the insurance.

A violation is an unfair trade practice under G.S. 75-1.1.

Part X. Miscellaneous Changes

Section 10.1 makes a technical change.

Part XI. Severability

Section 11.1 provides that if any section or provision of the act is declared unconstitutional, preempted or invalid, it does not affect the validity of any other part of the act.

EFFECTIVE DATE: Part I of the act becomes effective January 1, 2009 and applies to policies issued or renewed on or after that date. Part III of the act is effective when it becomes law and applies to violations occurring on or after that date. Parts VI and VII of this act becomes effective October 1, 2008. The remainder of the act is effective when it becomes law.

H0738e1-SMRG-CSRG-001



HOUSE BILL 738: Insurance Amendments-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 23, 2008
Introduced by:	Reps. Goforth, Holliman	Summary by:	Tim Hovis
Version:	PCS to First Edition H738-CSR-70[v.18]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute replaces the original bill, Custodial Agreements & Clearing Corp. Act, with various amendments to the law governing insurance including uninsured and underinsured motorist coverage, insurer financial requirements, unauthorized insurers, motor vehicle rate evasion, the NC Health Insurance Risk Pool, Professional Employer Organizations, Building Code Officials Qualification Board and other insurance related changes.*

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Section 1.1 of the Proposed Committee Substitute for House Bill 738 would require motor vehicle liability policies to include uninsured motorist coverage equal to the highest limits of bodily injury liability coverage and property damage liability coverage, and underinsured coverage equal to the highest limits of bodily injury liability coverage, for any for any one vehicle insured under the policy. The PCS provides that the named insured may purchase uninsured and underinsured bodily injury coverage with greater limits. However, uninsured and underinsured bodily injury coverage limits may not exceed \$1,000,000 per person and \$1,000,000 per accident. An insurer must notify the named insured of his or her right to purchase uninsured and underinsured bodily injury coverage with greater limits upon issuance and renewal of the policy. Insurers failing to provide notice as required by this section shall be subject to a civil penalty.

Section 1 deletes current language allowing an insured to reject uninsured and underinsured motorists coverage.

Section 1 also provides that no policy applicable solely to commercial vehicles or fleet vehicles is required to provide mandatory uninsured or underinsured motorists.

Section 1.2 adds several new subsections to G.S. 20-279.21 including the following: (1) requires notice to an insured of his or her right to purchase uninsured or underinsured motorist coverage at greater than the mandatory limits (as provided in section 1 of the PCS); and (2) provides that the statute shall not be construed to provide greater amounts of uninsured or underinsured motorist coverage in a liability policy than purchased by the insured.

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Part III. Unauthorized Insurer Amendments

Sections 3.1 through 3.3 make technical and conforming changes.

Section 3.4 adds three new sections to the General Statutes to do the following:

- New G.S. 58-28-12 redefines "transacting insurance business"
- New G.S. 58-28-13 provides that only admitted insurers may transact business in the State and increases the maximum monetary penalty from \$5,000 per offense to \$5,000 for the first offense and \$10,000 for each succeeding offense
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Section 3.5 repeals the existing statute, G.S. 58-28-10, governing the unauthorized transaction of business.

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Section 4.1 clarifies that the Division is only required to get a statement of eligible risk from the owner of a nonfleet private passenger motor vehicle. Owners of commercial motor vehicles are not required to provide a statement of eligible risk.

Section 4.2 makes a technical change clarifying that an insurer may terminate a nonfleet private passenger motor vehicle policy if an insured provides false and misleading information or if the insured is no longer an eligible risk.

Part V. Managed Care Record Retention Amendments and HMO Technical Amendment

Sections 5.1 and 5.2 would require health insurers and utilization review organizations (UROs) to maintain records for a period of five years, not three years as required under current law. Domestic companies are required to keep their records for five years or until the Commissioner has adopted a final general examination report for a specific calendar year, whichever is later. This section reflects a 2007 change increasing the period for company examinations from three years to five years.

Section 5.3 makes a technical change.

House Bill 738

Page 3

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Section 6.1 changes the statutory reference for travel allowances for N.C. Health Insurance Risk Pool Board members from G.S. 138-6 governing State employees to G.S. 138-5 governing members of State Boards. Health Insurance Risk Pool Board members are not State employees.

This section also amends current law to provide that Board members may receive a subsistence allowance under G.S. 138-5.

Section 6.2 and 6.3 provide that the Executive Director may enter into contracts and may select a Pool administrator with "the approval or authorization of the Board." Under current law, the Executive Director may act "in collaboration with" the Board.

Section 6.4 provides that the Pool coverage shall cease if a covered individual commits fraud or makes an intentional misrepresentation of material fact under the coverage terms.

Section 6.5 provides that individuals eligible for coverage in the Pool under the federal Trade Adjustment Assistance Reform Act of 2002 (G.S. 58-50-195(a)(6)) are not subject to the pre-existing condition exclusion. This language is required for Pool coverage to qualify for the Health Care Tax Credit under federal law.

This section also repeals G.S. 58-50-210(b) and adds a new subsection (c) to allow credit under the preexisting condition waiting period for periods of prior creditable coverage for individuals who are eligible for the Pool even if termination of that coverage was voluntary. Subsection (b) allows credit for prior coverage only if that coverage was involuntarily terminated. The Board believes subsection (b) conflicts with provisions in the Act that allows persons to join the Pool who have current coverage that is more expensive than Pool coverage.

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Section 7.1 makes a technical change.

Section 7.2 would amend the Professional Employer Organization (PEO) Act to make changes to the deposit amount required of PEO license applicants. Under current law, applicants are required to file a surety bond in the amount of \$100,000. This section would require the bond to equal 5% of the prior year's total State wages, benefits, workers compensation premiums and unemployment compensation contributions, but not greater than \$500,000. The bond can be a greater amount in the discretion of the Commissioner.

Section 7.3 repeals G.S. 58-89A-10 which creates the PEO Advisory Council.

Section 7.4 would require all PEO health insurance plans to be fully insured by a licensed insurance company, a medical service corporation (BC&BS), or a health maintenance organization. This section would delete language authorizing PEOs to self-insure employee benefit plans. There are currently 4 PEOs in the State that self insure.

Existing licensees are required to comply with this section by October 1, 2009. Prior to that time, the licensee offering a health plan that is not fully insured must comply with current law requiring that the plan utilize a licensed third party, hold all plan assets in a trust account, and provide sound reserves for the plan.

Part VIII. Code Officials Qualification Board Amendments

Section 8.1 makes technical changes and references a change made in Section 8.2 of the PCS.

House Bill 738

Page 4

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Part IX. Prohibition Against Free Insurance

Section 9.1 would create a new Article 44 of Chapter 66 of the General Statutes to prohibit the advertising, offer or provision of free insurance for damage, loss or theft as an inducement to purchase, sale, or rent consumer goods. "Consumer goods" is defined to mean goods for personal family, or household purposes other than automobiles or residences. "Free insurance" means insurance for which no identifiable charge or additional charge is made or for which an identifiable or additional charge is made that is less than the cost of the insurance to the seller, lessor, or other person, other than the insurer providing the insurance.

A violation is an unfair trade practice under G.S. 75-1.1.

Part X. Miscellaneous Changes

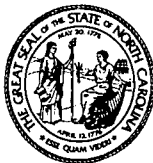
Section 10.1 makes a technical change.

Part XI. Severability

Section 11.1 provides that if any section or provision of the act is declared unconstitutional, preempted or invalid, it does not affect the validity of any other part of the act.

EFFECTIVE DATE: Part I of the act becomes effective January 1, 2009 and applies to policies issued or renewed on or after that date. Part III of the act is effective when it becomes law and applies to violations occurring on or after that date. Parts VI and VII of this act becomes effective October 1, 2008. The remainder of the act is effective when it becomes law.

H0738e1-SMRG-CSRG-001



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 738*

H738-ARG-43 [v.1]

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

Page 1 of 1

Date 6-24, 2008

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

Senator P. BERGER

- 1 moves to amend the bill on page 24, line 22,
- 2 by inserting between the date "October 1, 2008." and the word "The" the following
- 3 sentence:
- 4 "Part IX of this act becomes effective October 1, 2008 and applies to violations that
- 5 occur on or after that date."
- 6
- 7

SIGNED

Amendment Sponsor

SIGNED

Committee Chair if Senate Committee Amendment

ADOPTED

X

FAILED

TABLED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

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HOUSE BILL 738*

PROPOSED SENATE COMMITTEE SUBSTITUTE H738-PCS80625-RG-70

Short Title: Insurance Changes-AB.

(Public)

Sponsors:

Referred to:

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO REQUIRE UNINSURED AND UNDERINSURED MOTORIST
COVERAGE; MAKE TECHNICAL CHANGES TO INSURANCE FINANCIAL
PROVISIONS; AMEND THE UNAUTHORIZED INSURER LAWS; MAKE
TECHNICAL CHANGES TO THE RATE EVASION LAW TO CLARIFY THAT
IT APPLIES ONLY TO PRIVATE PASSENGER VEHICLES AND TO ADD A
TERMINATION RESTRICTION CONSISTENT WITH G.S. 58-37-50 TO
CLARIFY THAT THE RATE EVASION LAW APPLIES TO CEDED AND
UNCEDED POLICIES; REVISE MANAGED CARE AND HMO RECORD
RETENTION LAWS; MAKE CHANGES TO THE HEALTH INSURANCE RISK
POOL LAWS; STRENGTHEN PROFESSIONAL EMPLOYER ORGANIZATION
PROTECTIONS; MAKE CHANGES TO THE LAW GOVERNING THE CODE
OFFICIALS QUALIFICATION BOARD; PROHIBIT FREE INSURANCE; AND
TO MAKE OTHER MISCELLANEOUS CHANGES.

The General Assembly of North Carolina enacts:

PART I. UNINSURED AND UNDERINSURED MOTORIST COVERAGE.

SECTION 1.1. G.S. 20-279.21(b)(3) and (b)(4) read as rewritten:

"(b) Such owner's policy of liability insurance:

...

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered or principally garaged in this State unless coverage is provided therein or supplemental thereto, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury,

1 sickness or disease, including death, resulting therefrom, ~~in an amount~~
2 ~~not to be less than the financial responsibility amounts for bodily~~
3 ~~injury liability as set forth in G.S. 20-279.5 nor greater than one~~
4 ~~million dollars (\$1,000,000), as selected by the policy owner, with~~
5 limits equal to the highest limits of bodily injury liability coverage for
6 any one vehicle insured under the policy. The named insured may
7 purchase uninsured motorist bodily injury coverage with greater limits,
8 subject to the limitation that in no event shall uninsured motorist
9 bodily injury coverage limits exceed one million dollars (\$1,000,000)
10 per person and one million dollars (\$1,000,000) per accident. The
11 insurer shall notify the named insured of his or her right to purchase
12 uninsured motorist bodily injury coverage with greater limits, when
13 the policy is issued and renewed, as provided in subsection (m) of this
14 section. The provisions shall include coverage for the protection of
15 persons insured thereunder who are legally entitled to recover damages
16 from owners or operators of uninsured motor vehicles because of
17 injury to or destruction of the property of such insured, with a limit in
18 the aggregate for all insureds in any one accident of up equal to the
19 highest limits of property damage liability coverage for any one
20 vehicle insured in the owner's policy of liability insurance, and subject,
21 for each insured, to an exclusion of the first one hundred dollars
22 (\$100.00) of such damages. The provision shall further provide that a
23 written statement by the liability insurer, whose name appears on the
24 certification of financial responsibility made by the owner of any
25 vehicle involved in an accident with the insured, that the other motor
26 vehicle was not covered by insurance at the time of the accident with
27 the insured shall operate as a prima facie presumption that the operator
28 of the other motor vehicle was uninsured at the time of the accident
29 with the insured for the purposes of recovery under this provision of
30 the insured's liability insurance policy. The coverage required under
31 this subdivision is not applicable where any insured named in the
32 policy rejects the coverage. An insured named in the policy may select
33 different coverage limits as provided in this subdivision. If the named
34 insured in the policy does not reject uninsured motorist coverage and
35 does not select different coverage limits, the amount of uninsured
36 motorist coverage shall be equal to the highest limit of bodily injury
37 and property damage liability coverage for any one vehicle in the
38 policy. Once the option to reject the uninsured motorist coverage or to
39 select different coverage limits is offered by the insurer, the insurer is
40 not required to offer the option in any renewal, reinstatement,
41 substitute, amended, altered, modified, transfer, or replacement policy
42 unless the named insured makes a written request to exercise a
43 different option. The selection or rejection of uninsured motorist
44 coverage or the failure to select or reject by a named insured is valid

1 ~~and binding on all insureds and vehicles under the policy. Rejection of~~
2 ~~or selection of different coverage limits for uninsured motorist~~
3 ~~coverage for policies under the jurisdiction of the North Carolina Rate~~
4 ~~Bureau shall be made in writing by a named insured on a form~~
5 ~~promulgated by the Bureau and approved by the Commissioner of~~
6 ~~Insurance.~~

7 If a person who is legally entitled to recover damages from the
8 owner or operator of an uninsured motor vehicle is an insured under
9 the uninsured motorist coverage of a policy that insures more than one
10 motor vehicle, that person shall not be permitted to combine the
11 uninsured motorist limit applicable to any one motor vehicle with the
12 uninsured motorist limit applicable to any other motor vehicle to
13 determine the total amount of uninsured motorist coverage available to
14 that person. If a person who is legally entitled to recover damages from
15 the owner or operator of an uninsured motor vehicle is an insured
16 under the uninsured motorist coverage of more than one policy, that
17 person may combine the highest applicable uninsured motorist limit
18 available under each policy to determine the total amount of uninsured
19 motorist coverage available to that person. The previous sentence shall
20 apply only to insurance on nonfleet private passenger motor vehicles
21 as described in G.S. 58-40-10(1) and (2).

22 In addition to the above requirements relating to uninsured motorist
23 insurance, every policy of bodily injury liability insurance covering
24 liability arising out of the ownership, maintenance or use of any motor
25 vehicle, which policy is delivered or issued for delivery in this State,
26 shall be subject to the following provisions which need not be
27 contained therein.

28 a. A provision that the insurer shall be bound by a final judgment
29 taken by the insured against an uninsured motorist if the insurer
30 has been served with copy of summons, complaint or other
31 process in the action against the uninsured motorist by
32 registered or certified mail, return receipt requested, or in any
33 manner provided by law; provided however, that the
34 determination of whether a motorist is uninsured may be
35 decided only by an action against the insurer alone. The insurer,
36 upon being served as herein provided, shall be a party to the
37 action between the insured and the uninsured motorist though
38 not named in the caption of the pleadings and may defend the
39 suit in the name of the uninsured motorist or in its own name.
40 The insurer, upon being served with copy of summons,
41 complaint or other pleading, shall have the time allowed by
42 statute in which to answer, demur or otherwise plead (whether
43 the pleading is verified or not) to the summons, complaint or
44 other process served upon it. The consent of the insurer shall

1 not be required for the initiation of suit by the insured against
2 the uninsured motorist: Provided, however, no action shall be
3 initiated by the insured until 60 days following the posting of
4 notice to the insurer at the address shown on the policy or after
5 personal delivery of the notice to the insurer or its agent setting
6 forth the belief of the insured that the prospective defendant or
7 defendants are uninsured motorists. No default judgment shall
8 be entered when the insurer has timely filed an answer or other
9 pleading as required by law. The failure to post notice to the
10 insurer 60 days in advance of the initiation of suit shall not be
11 grounds for dismissal of the action, but shall automatically
12 extend the time for the filing of an answer or other pleadings to
13 60 days after the time of service of the summons, complaint, or
14 other process on the insurer.

- 15 b. Where the insured, under the uninsured motorist coverage,
16 claims that he has sustained bodily injury as the result of
17 collision between motor vehicles and asserts that the identity of
18 the operator or owner of a vehicle (other than a vehicle in which
19 the insured is a passenger) cannot be ascertained, the insured
20 may institute an action directly against the insurer: Provided, in
21 that event, the insured, or someone in his behalf, shall report the
22 accident within 24 hours or as soon thereafter as may be
23 practicable, to a police officer, peace officer, other judicial
24 officer, or to the Commissioner of Motor Vehicles. The insured
25 shall also within a reasonable time give notice to the insurer of
26 his injury, the extent thereof, and shall set forth in the notice the
27 time, date and place of the injury. Thereafter, on forms to be
28 mailed by the insurer within 15 days following receipt of the
29 notice of the accident to the insurer, the insured shall furnish to
30 insurer any further reasonable information concerning the
31 accident and the injury that the insurer requests. If the forms are
32 not furnished within 15 days, the insured is deemed to have
33 complied with the requirements for furnishing information to
34 the insurer. Suit may not be instituted against the insurer in less
35 than 60 days from the posting of the first notice of the injury or
36 accident to the insurer at the address shown on the policy or
37 after personal delivery of the notice to the insurer or its agent.
38 The failure to post notice to the insurer 60 days before the
39 initiation of the suit shall not be grounds for dismissal of the
40 action, but shall automatically extend the time for filing of an
41 answer or other pleadings to 60 days after the time of service of
42 the summons, complaint, or other process on the insurer.

43 Provided under this section the term "uninsured motor vehicle"
44 shall include, but not be limited to, an insured motor vehicle where the

1 liability insurer thereof is unable to make payment with respect to the
2 legal liability within the limits specified therein because of insolvency.

3 An insurer's insolvency protection shall be applicable only to
4 accidents occurring during a policy period in which its insured's
5 uninsured motorist coverage is in effect where the liability insurer of
6 the tort-feasor becomes insolvent within three years after such an
7 accident. Nothing herein shall be construed to prevent any insurer from
8 affording insolvency protection under terms and conditions more
9 favorable to the insured than is provided herein.

10 In the event of payment to any person under the coverage required
11 by this section and subject to the terms and conditions of coverage, the
12 insurer making payment shall, to the extent thereof, be entitled to the
13 proceeds of any settlement for judgment resulting from the exercise of
14 any limits of recovery of that person against any person or
15 organization legally responsible for the bodily injury for which the
16 payment is made, including the proceeds recoverable from the assets
17 of the insolvent insurer.

18 For the purpose of this section, an "uninsured motor vehicle" shall
19 be a motor vehicle as to which there is no bodily injury liability
20 insurance and property damage liability insurance in at least the
21 amounts specified in subsection (c) of G.S. 20-279.5, or there is that
22 insurance but the insurance company writing the insurance denies
23 coverage thereunder, or has become bankrupt, or there is no bond or
24 deposit of money or securities as provided in G.S. 20-279.24 or
25 20-279.25 in lieu of the bodily injury and property damage liability
26 insurance, or the owner of the motor vehicle has not qualified as a
27 self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is
28 not subject to the provisions of the Motor Vehicle Safety and Financial
29 Responsibility Act; but the term "uninsured motor vehicle" shall not
30 include:

- 31 a. A motor vehicle owned by the named insured;
- 32 b. A motor vehicle that is owned or operated by a self-insurer
33 within the meaning of any motor vehicle financial responsibility
34 law, motor carrier law or any similar law;
- 35 c. A motor vehicle that is owned by the United States of America,
36 Canada, a state, or any agency of any of the foregoing
37 (excluding, however, political subdivisions thereof);
- 38 d. A land motor vehicle or trailer, if operated on rails or
39 crawler-treads or while located for use as a residence or
40 premises and not as a vehicle; or
- 41 e. A farm-type tractor or equipment designed for use principally
42 off public roads, except while actually upon public roads.

43 For purposes of this section "persons insured" means the named
44 insured and, while resident of the same household, the spouse of any

1 named insured and relatives of either, while in a motor vehicle or
2 otherwise, and any person who uses with the consent, expressed or
3 implied, of the named insured, the motor vehicle to which the policy
4 applies and a guest in the motor vehicle to which the policy applies or
5 the personal representative of any of the above or any other person or
6 persons in lawful possession of the motor vehicle.

7 Notwithstanding the provisions of this subsection, no policy of
8 motor vehicle liability insurance applicable solely to commercial
9 motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to
10 fleet vehicles shall be required to provide uninsured motorist coverage.
11 Any motor vehicle liability policy that insures both commercial motor
12 vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor
13 vehicles shall provide uninsured motorist coverage in accordance with
14 the provisions of this subsection in amounts equal to the highest limits
15 of bodily injury and property damage liability coverage for any one
16 noncommercial motor vehicle insured under the policy, subject to the
17 right of the insured to purchase higher uninsured motorist bodily injury
18 liability coverage limits as set forth in this subsection. For the purpose
19 of the immediately preceding sentence, noncommercial motor vehicle
20 shall mean any motor vehicle that is not a commercial motor vehicle as
21 defined in G.S. 20-4.01(3d), but that is otherwise subject to the
22 requirements of this subsection.

- 23 (4) Shall, in addition to the coverages set forth in subdivisions (2) and (3)
24 of this subsection, provide underinsured motorist coverage, to be used
25 only with a policy that is written at limits that exceed those prescribed
26 by subdivision (2) of this section ~~and that afford uninsured motorist~~
27 ~~coverage as provided by subdivision (3) of this subsection, in an~~
28 ~~amount not to be less than the financial responsibility amounts for~~
29 ~~bodily injury liability as set forth in G.S. 20-279.5 nor greater than one~~
30 ~~million dollars (\$1,000,000) as selected by the policy owner. section,~~
31 with limits equal to the highest limits of bodily injury liability
32 coverage for any one vehicle insured under the policy. The named
33 insured may purchase underinsured motorist coverage with greater
34 limits, subject to the limitation that in no event shall the underinsured
35 motorist coverage limits exceed one million dollars (\$1,000,000) per
36 person and one million dollars (\$1,000,000) per accident. The insurer
37 shall notify the named insured of his or her right to purchase
38 underinsured motorist coverage with greater limits, when the policy is
39 issued and renewed, as provided in subsection (m) of this section. An
40 "uninsured motor vehicle," as described in subdivision (3) of this
41 subsection, includes an "underinsured highway vehicle," which means
42 a highway vehicle with respect to the ownership, maintenance, or use
43 of which, the sum of the limits of liability under all bodily injury
44 liability bonds and insurance policies applicable at the time of the

1 accident is less than the applicable limits of underinsured motorist
2 coverage for the vehicle involved in the accident and insured under the
3 owner's policy. For purposes of an underinsured motorist claim
4 asserted by a person injured in an accident where more than one
5 person is injured, a highway vehicle will also be an "underinsured
6 highway vehicle" if the total amount actually paid to that person under
7 all bodily injury liability bonds and insurance policies applicable at the
8 time of the accident is less than the applicable limits of underinsured
9 motorist coverage for the vehicle involved in the accident and insured
10 under the owner's policy. Notwithstanding the immediately preceding
11 sentence, a highway vehicle shall not be an "underinsured motor
12 vehicle" for purposes of an underinsured motorist claim under an
13 owner's policy insuring that vehicle if unless the owner's policy
14 insuring that vehicle provides underinsured motorist coverage with
15 limits that are ~~less than or equal to~~ greater than that policy's bodily
16 injury liability limits. For the purposes of this subdivision, the term
17 "highway vehicle" means a land motor vehicle or trailer other than (i)
18 a farm-type tractor or other vehicle designed for use principally off
19 public roads and while not upon public roads, (ii) a vehicle operated on
20 rails or crawler-treads, or (iii) a vehicle while located for use as a
21 residence or premises. The provisions of subdivision (3) of this
22 subsection shall apply to the coverage required by this subdivision.
23 Underinsured motorist coverage is deemed to apply when, by reason of
24 payment of judgment or settlement, all liability bonds or insurance
25 policies providing coverage for bodily injury caused by the ownership,
26 maintenance, or use of the underinsured highway vehicle have been
27 exhausted. Exhaustion of that liability coverage for the purpose of any
28 single liability claim presented for underinsured motorist coverage is
29 deemed to occur when either (a) the limits of liability per claim have
30 been paid upon the claim, or (b) by reason of multiple claims, the
31 aggregate per occurrence limit of liability has been paid. Underinsured
32 motorist coverage is deemed to apply to the first dollar of an
33 underinsured motorist coverage claim beyond amounts paid to the
34 claimant under the exhausted liability policy.

35 In any event, the limit of underinsured motorist coverage
36 applicable to any claim is determined to be the difference between the
37 amount paid to the claimant under the exhausted liability policy or
38 policies and the limit of underinsured motorist coverage applicable to
39 the motor vehicle involved in the accident. Furthermore, if a claimant
40 is an insured under the underinsured motorist coverage on separate or
41 additional policies, the limit of underinsured motorist coverage
42 applicable to the claimant is the difference between the amount paid to
43 the claimant under the exhausted liability policy or policies and the
44 total limits of the claimant's underinsured motorist coverages as

1 determined by combining the highest limit available under each policy;
2 provided that this sentence shall apply only to insurance on nonfleet
3 private passenger motor vehicles as described in G.S. 58-40-15(9) and
4 (10). The underinsured motorist limits applicable to any one motor
5 vehicle under a policy shall not be combined with or added to the
6 limits applicable to any other motor vehicle under that policy.

7 An underinsured motorist insurer may at its option, upon a claim
8 pursuant to underinsured motorist coverage, pay moneys without there
9 having first been an exhaustion of the liability insurance policy
10 covering the ownership, use, and maintenance of the underinsured
11 highway vehicle. In the event of payment, the underinsured motorist
12 insurer shall be either: (a) entitled to receive by assignment from the
13 claimant any right or (b) subrogated to the claimant's right regarding
14 any claim the claimant has or had against the owner, operator, or
15 maintainer of the underinsured highway vehicle, provided that the
16 amount of the insurer's right by subrogation or assignment shall not
17 exceed payments made to the claimant by the insurer. No insurer shall
18 exercise any right of subrogation or any right to approve settlement
19 with the original owner, operator, or maintainer of the underinsured
20 highway vehicle under a policy providing coverage against an
21 underinsured motorist where the insurer has been provided with
22 written notice before a settlement between its insured and the
23 underinsured motorist and the insurer fails to advance a payment to the
24 insured in an amount equal to the tentative settlement within 30 days
25 following receipt of that notice. Further, the insurer shall have the
26 right, at its election, to pursue its claim by assignment or subrogation
27 in the name of the claimant, and the insurer shall not be denominated
28 as a party in its own name except upon its own election. Assignment or
29 subrogation as provided in this subdivision shall not, absent contrary
30 agreement, operate to defeat the claimant's right to pursue recovery
31 against the owner, operator, or maintainer of the underinsured highway
32 vehicle for damages beyond those paid by the underinsured motorist
33 insurer. The claimant and the underinsured motorist insurer may join
34 their claims in a single suit without requiring that the insurer be named
35 as a party. Any claimant who intends to pursue recovery against the
36 owner, operator, or maintainer of the underinsured highway vehicle for
37 moneys beyond those paid by the underinsured motorist insurer shall
38 before doing so give notice to the insurer and give the insurer, at its
39 expense, the opportunity to participate in the prosecution of the claim.
40 Upon the entry of judgment in a suit upon any such claim in which the
41 underinsured motorist insurer and claimant are joined, payment upon
42 the judgment, unless otherwise agreed to, shall be applied pro rata to
43 the claimant's claim beyond payment by the insurer of the owner,

1 operator or maintainer of the underinsured highway vehicle and the
2 claim of the underinsured motorist insurer.

3 A party injured by the operation of an underinsured highway
4 vehicle who institutes a suit for the recovery of moneys for those
5 injuries and in such an amount that, if recovered, would support a
6 claim under underinsured motorist coverage shall give notice of the
7 initiation of the suit to the underinsured motorist insurer as well as to
8 the insurer providing primary liability coverage upon the underinsured
9 highway vehicle. Upon receipt of notice, the underinsured motorist
10 insurer shall have the right to appear in defense of the claim without
11 being named as a party therein, and without being named as a party
12 may participate in the suit as fully as if it were a party. The
13 underinsured motorist insurer may elect, but may not be compelled, to
14 appear in the action in its own name and present therein a claim
15 against other parties; provided that application is made to and
16 approved by a presiding superior court judge, in any such suit, any
17 insurer providing primary liability insurance on the underinsured
18 highway vehicle may upon payment of all of its applicable limits of
19 liability be released from further liability or obligation to participate in
20 the defense of such proceeding. However, before approving any such
21 application, the court shall be persuaded that the owner, operator, or
22 maintainer of the underinsured highway vehicle against whom a claim
23 has been made has been apprised of the nature of the proceeding and
24 given his right to select counsel of his own choice to appear in the
25 action on his separate behalf. If an underinsured motorist insurer,
26 following the approval of the application, pays in settlement or partial
27 or total satisfaction of judgment moneys to the claimant, the insurer
28 shall be subrogated to or entitled to an assignment of the claimant's
29 rights against the owner, operator, or maintainer of the underinsured
30 highway vehicle and, provided that adequate notice of right of
31 independent representation was given to the owner, operator, or
32 maintainer, a finding of liability or the award of damages shall be res
33 judicata between the underinsured motorist insurer and the owner,
34 operator, or maintainer of underinsured highway vehicle.

35 As consideration for payment of policy limits by a liability insurer
36 on behalf of the owner, operator, or maintainer of an underinsured
37 motor vehicle, a party injured by an underinsured motor vehicle may
38 execute a contractual covenant not to enforce against the owner,
39 operator, or maintainer of the vehicle any judgment that exceeds the
40 policy limits. A covenant not to enforce judgment shall not preclude
41 the injured party from pursuing available underinsured motorist
42 benefits, unless the terms of the covenant expressly provide otherwise,
43 and shall not preclude an insurer providing underinsured motorist
44 coverage from pursuing any right of subrogation.

~~The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage. An insured named in the policy may select different coverage limits as provided in this subdivision. If the named insured does not reject underinsured motorist coverage and does not select different coverage limits, the amount of underinsured motorist coverage shall be equal to the highest limit of bodily injury liability coverage for any one vehicle in the policy. Once the option to reject underinsured motorist coverage or to select different coverage limits is offered by the insurer, the insurer is not required to offer the option in any renewal, reinstatement, substitute, amended, altered, modified, transfer, or replacement policy unless a named insured makes a written request to exercise a different option. The selection or rejection of underinsured motorist coverage by a named insured or the failure to select or reject is valid and binding on all insureds and vehicles under the policy.~~

~~Rejection of or selection of different coverage limits for underinsured motorist coverage for policies under the jurisdiction of the North Carolina Rate Bureau shall be made in writing by the named insured on a form promulgated by the Bureau and approved by the Commissioner of Insurance.~~

Notwithstanding the provisions of this subsection, no policy of motor vehicle liability insurance applicable solely to commercial motor vehicles as defined in G.S. 20-4.01(3d) or applicable solely to fleet vehicles shall be required to provide underinsured motorist coverage. Any motor vehicle liability policy that insures both commercial motor vehicles as defined in G.S. 20-4.01(3d) and noncommercial motor vehicles shall provide underinsured motorist coverage in accordance with the provisions of this subsection in an amount equal to the highest limits of bodily injury liability coverage for any one noncommercial motor vehicle insured under the policy, subject to the right of the insured to purchase higher underinsured motorist bodily injury liability coverage limits as set forth in this subsection. For the purpose of the immediately preceding sentence, noncommercial motor vehicle shall mean any motor vehicle that is not a commercial motor vehicle as defined in G.S. 20-4.01(3d), but that is otherwise subject to the requirements of this subsection."

SECTION 1.2. G.S. 20-279.21 is amended by adding the following new subsections to read:

"(m) Every insurer that sells motor vehicle liability policies subject to the requirements of subdivisions (b)(3) and (b)(4) of this section shall give reasonable notice to the named insured, when the policy is issued and renewed, that the named insured may purchase uninsured motorist bodily injury coverage and, if applicable, underinsured motorist coverage with limits up to one million dollars (\$1,000,000) per person and one million dollars (\$1,000,000) per accident. An insurer shall be deemed to

1 have given reasonable notice if it includes the following or substantially similar
2 language on the policy's original and renewal declarations pages or in a separate notice
3 accompanying the original and renewal declarations pages in at least 10 point type:

4 "NOTICE: YOU MAY PURCHASE UNINSURED MOTORIST BODILY INJURY
5 COVERAGE AND, IF APPLICABLE, UNDERINSURED MOTORIST COVERAGE
6 WITH LIMITS UP TO ONE MILLION DOLLARS (\$1,000,000) PER PERSON AND
7 ONE MILLION DOLLARS (\$1,000,000) PER ACCIDENT. THIS INSURANCE
8 PROTECTS YOU AND YOUR FAMILY AGAINST INJURIES CAUSED BY THE
9 NEGLIGENCE OF OTHER DRIVERS WHO MAY HAVE LIMITED OR ONLY
10 MINIMUM COVERAGE OR EVEN NO LIABILITY INSURANCE. YOU SHOULD
11 CONTACT YOUR INSURANCE COMPANY OR AGENT TO DISCUSS YOUR
12 OPTIONS FOR OBTAINING THIS ADDITIONAL COVERAGE. YOU SHOULD
13 ALSO READ YOUR ENTIRE POLICY TO UNDERSTAND WHAT IS COVERED
14 UNDER UNINSURED AND UNDERINSURED MOTORIST COVERAGES."

15 (n) Nothing in this section shall be construed to provide greater amounts of
16 uninsured or underinsured motorist coverage in a liability policy than the insured has
17 purchased from the insurer under this section.

18 (o) An insurer that fails to comply with subsection (m) of this section is subject
19 to a civil penalty under G.S. 58-2-70."

20 PART II. INSURANCE COMPANY FINANCIAL SOLVENCY PROVISIONS.

21 SECTION 2.1. G.S. 58-5-50 reads as rewritten:

22 "§ 58-5-50. Deposits of foreign life insurance companies.

23 In addition to other requirements of Articles 1 through 64 of this Chapter, all foreign
24 life insurance companies shall deposit securities, as specified in G.S. 58-5-20, having
25 that have a market value of four hundred thousand dollars (\$400,000) as a prerequisite
26 of doing business in this State. All foreign life insurance companies shall deposit an
27 additional two hundred thousand dollars (\$200,000) where such companies cannot show
28 three years of net operational gains prior to admission. income before being licensed in
29 this State."

30 SECTION 2.2. The catch line of G.S. 58-10-145 reads as rewritten:

31 "§ 58-10-145. ~~Mono-line~~ Monoline requirement for mortgage guaranty insurers."

32 SECTION 2.3. G.S. 58-7-15(17) reads as rewritten:

33 "(17) "Credit insurance," meaning indemnifying merchants or other persons
34 extending credit against loss or damage resulting from the nonpayment
35 of debts owed to them; and including the incidental power to acquire
36 and dispose of debts so insured, and to collect any debts owed to the
37 insurer or to any person so insured by the insurer; and also including
38 insurance where the debt is secured by either (a) a junior lien on real
39 estate or (b) where the debt is secured by a first lien on real estate as
40 long as (i) the purpose of the debt being insured is not for the purchase
41 of the real estate and the insurance is limited to twenty-five percent
42 (25%) of the insurer's aggregate insured risk outstanding, before
43 reinsurance ceded or assumed or (ii) the insurance is not included
44 within the definition of mortgage guaranty insurance."

SECTION 2.4. G.S. 58-5-71 reads as rewritten:

"§ 58-5-71. Liens of policyholders; subordination.

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims. 'Special deposit claims' has the same meaning set forth in G.S. 58-30-10(19)."

SECTION 2.5. G.S. 58-5-55 reads as rewritten:

"§ 58-5-55. Deposits of capital and surplus by domestic insurance companies.

(a) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic stock insurance companies shall deposit their required statutory capital with the ~~Department~~ Commissioner. Such deposits shall be under the exclusive control of the ~~Department~~ Commissioner for the protection of policyholders.

(b) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic mutual insurance companies shall deposit at least fifty percent (50%) of their minimum required surplus with the ~~Department~~ Commissioner, with the amount of the deposit to be determined by the Commissioner. Such deposits shall be under the exclusive control of the ~~Department~~ Commissioner for the protection of policyholders.

(c) Deposits fulfilling the requirements of this section shall comprise:

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina."

SECTION 2.6. G.S. 58-7-75 is amended by adding two new subdivisions to read:

"§ 58-7-75. Amount of capital and/or surplus required; impairment of capital or surplus.

...

(1a) Non-Stock Life Insurance Companies. – A nonstock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do the business of life insurance, only when it has a paid in initial surplus of at least one million five hundred thousand dollars (\$1,500,000) and it may in addition do the kind of business specified in G.S. 58-7-15(2), without having additional surplus. Every such corporation shall at all times thereafter maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000). Provided that, any such corporation may conduct the kind of insurance authorized for stock accident and health insurance companies, as set out in G.S. 58-7-15(3)a. and b., where its charter so permits, and only as long as it maintains a minimum surplus equal to the sum of the minimum surplus requirements of this subdivision and the minimum surplus requirements of subdivision (2a) of this section.

...

(2a) Non-Stock Accident and Health Insurance Companies.

- a. A non-stock corporation, not inclusive of a corporation organized pursuant to subdivision (6) of this section, may be organized in the manner prescribed in this Chapter and licensed to do only the kind of insurance specified in G.S. 58-7-15(3)a. when it has a paid in initial surplus of at least one million dollars (\$1,000,000). Every such corporation shall at all times thereafter maintain a minimum surplus of at least five hundred thousand dollars (\$500,000).
- b. Any non-stock corporation organized under the provisions of sub-subdivision a. of this subdivision may, by the provisions of its original charter or any amendment thereto, acquire the power to do the kind of business specified in G.S. 58-7-15(3)b., if it has a paid-in initial surplus of at least one million five hundred thousand dollars (\$1,500,000). Every such corporation shall at all times maintain a minimum surplus of at least seven hundred fifty thousand dollars (\$750,000)."

PART III. UNAUTHORIZED INSURER AMENDMENTS.

SECTION 3.1. The catch line for G.S. 58-28-5 reads as rewritten:

"§ 58-28-5. Transacting business without ~~certificate of authority~~ a license prohibited; exceptions."

SECTION 3.2. G.S. 58-28-5(a) reads as rewritten:

"(a) Except as otherwise provided in this section, it is unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this State as set forth in ~~G.S. 58-28-10~~, G.S. 58-28-13 without a license issued by the Commissioner. This section does not apply to the following acts or transactions:

- (1) The procuring of a policy of insurance upon a risk within this State where the applicant is unable to procure coverage in the open market with admitted companies and is otherwise in compliance with Article 21 of this Chapter.
- (2) Contracts of reinsurance; but not including assumption reinsurance transactions, whereby the reinsuring company succeeds to all of the liabilities of and supplants the ceding company on the insurance contracts that are the subject of the transaction, unless prior approval has been obtained from the Commissioner.
- (3) Transactions in this State involving a policy lawfully solicited, written and delivered outside of this State covering only subjects of insurance not resident, located or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy.
- (4) Transactions in this State involving group life insurance, group annuities, or group, blanket, or franchise accident and health insurance where the master policy for the insurance was lawfully issued and

delivered in a state in which the company was authorized to transact business.

- (5) Transactions in this State involving all policies of insurance issued before July 1, 1967.
- (6) The procuring of contracts of insurance issued to a nuclear insured. As used in this subdivision, "nuclear insured" means a public utility procuring insurance against radioactive contamination and other risks of direct physical loss at a nuclear electric generating plant.
- (7) Insurance independently procured, as specified in subsection (b) of this section.
- (8) Insurance on vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies.
- (9) Transactions in this State involving commercial aircraft insurance, meaning insurance against (i) loss of or damage resulting from any cause to commercial aircraft and its equipment, (ii) legal liability of the insured for loss or damage to another person's property resulting from the ownership, maintenance, or use of commercial aircraft, and (iii) loss, damage, or expense incident to a liability claim.
- (10) An activity in this State by or on the sole behalf of a captive insurer that insures solely the risks of the company's parent and affiliated companies."

SECTION 3.3. G.S. 58-28-40(a) reads as rewritten:

"(a) Any act of entering into a contract of insurance as an insurer or transacting insurance business in this State, as set forth in ~~G.S. 58-28-10~~ G.S. 58-28-12 by an unauthorized, foreign or alien company, shall be equivalent to and shall constitute an appointment by such company of the Secretary of State to be its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against it arising out of a violation of G.S. 58-28-5, and any of said acts shall be a signification of its agreement that any such process against it, which is so served, shall be of the same legal force and validity as if in fact served upon the company."

SECTION 3.4. Article 28 of Chapter 58 of the General Statutes is amended by adding three new sections to read:

"§ 58-28-12. Transacting insurance business in this State.

Definitions. – As used in this section, G.S. 58-28-13, and G.S. 58-28-14:

- (1) "Admitted insurer" means an insurer that is licensed to write insurance in this State.
- (2) "Kind of insurance" means one of the types of insurance specified in G.S. 58-7-15.
- (3) "Nonadmitted insurer" means an insurer that is not licensed to write insurance in this State.
- (4) "Transacting insurance business" or "transact insurance business" means:

- a. The making of or proposing to make, as an insurer, an insurance contract.
- b. The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
- c. The solicitation, taking, or receiving of an application for insurance.
- d. The receiving or collection of any premium, commission, membership fees, assessments, dues, or other consideration for a contract of insurance or any part of the contract of insurance.
- e. The issuance or delivery in this State of a contract of insurance to a resident of this State or to a person authorized to do business in this State.
- f. The solicitation, negotiation, procurement, effectuation, or renewal of a contract of insurance.
- g. The dissemination of information as to coverage or rates; forwarding of an application; delivery of a contract of insurance; inspection of a risk; the fixing of rates; the investigation or adjustment of a claim or loss; the transaction of matters after effectuation of a contract of insurance and arising out of the contract; or any other manner of representing or assisting a person or insurer in transacting insurance business with respect to properties, risks, or exposures located or to be performed in this State.
- h. The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of this Chapter.
- i. The offering of insurance or the transacting of insurance business.
- j. The offering of an agreement or contract which purports to alter, amend, or void coverage of an insurance contract.
- k. The transaction of any matters before or after the execution of contracts of insurance in contemplation of or arising out of the execution.
- l. The maintaining of any agency or office in this State where any acts in furtherance of an insurance business are transacted, including the execution of contracts of insurance with citizens of this State or any other state.
- m. The maintaining of files or records of contracts of insurance in this State.

"§ 58-28-13. Placement of insurance business.

(a) An insurer shall not transact insurance business in this State unless it is an admitted insurer, is exempted by this Article, or is otherwise exempted by this Chapter.

(b) A person shall not transact insurance business or in this State directly or indirectly act as agent for, or otherwise represent or aid on behalf of another, a nonadmitted insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals of insurance; forwarding of applications; delivery of policies or contracts; inspection of risks; fixing of rates; investigation or adjustment of claims or losses; collection or forwarding of premiums; or in any other manner represent or assist the insurer in transacting insurance business.

(c) A person who represents or aids a nonadmitted insurer in violation of this section is subject to penalties or restitution, or both, as set forth in this section.

(d) This section does not prohibit employees, officers, directors, or partners of a commercial insured from acting in the capacity of an insurance manager or buyer in placing insurance on behalf of the employer, provided that the person's compensation is not based on buying insurance.

(e) The venue of an act committed by mail or any other medium is at the point where the matter transmitted by mail or other medium is delivered or issued for delivery or takes effect.

(f) The remedies prescribed in this section are not exclusive. Penalties may also be assessed under Article 63 of this Chapter or G.S. 58-2-161, or both.

(g) If the Commissioner finds a violation of this section, the Commissioner may order the payment of a monetary penalty after considering the factors in G.S. 58-28-14; or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (i) of this section; or both. The monetary penalty shall not exceed five thousand dollars (\$5,000) for the first offense and shall not exceed ten thousand dollars (\$10,000) for each succeeding offense. Each day during which a violation occurs constitutes a separate violation. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(h) Upon petition of the Commissioner, the Superior Court of Wake County may order the person who committed a violation specified in this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time and also in any appeal of any order issued by the Commissioner.

(i) Restitution to the Department for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the Department for the expenses.

(j) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any person as to any civil penalty or restitution.

(k) The Attorney General of the State of North Carolina at the request of and upon information from the Commissioner shall initiate a civil action in behalf of the Commissioner in any county of the State in which a violation under this section occurs to recover the penalty provided. Service of process upon the nonadmitted insurer shall be made under G.S. 58-28-40.

"§ 58-28-14. Monetary penalty; factors to be considered.

1 In determining the amount of the penalty under G.S. 58-28-13, the Commissioner
2 shall consider:

- 3 (1) The amount of money that inured to the benefit of the violator as a
4 result of the violation.
- 5 (2) Whether the violation was committed willfully.
- 6 (3) The prior record of the violator in complying or failing to comply with
7 laws, rules, or orders applicable to the violator.
- 8 (4) The failure of the violator to provide timely and complete responses to
9 the Department's inquiries about the violator's insurance activities in
10 North Carolina.
- 11 (5) The extent and degree to which the violator marketed its insurance
12 product in this State.
- 13 (6) The extent to which the violator's marketing materials, including fax
14 solicitations, Internet Web sites, circulars, or other forms of
15 advertisement or solicitations through any medium, were deceptive or
16 misleading to residents of this State.
- 17 (7) The number of residents of this State who enrolled in the violator's
18 insurance plan.
- 19 (8) The number of policies and amount of insurance coverage issued by
20 the violator to residents of this State.
- 21 (9) The failure of the violator to promptly refund premiums and other
22 consideration paid by residents of this State for insurance coverage
23 issued by the violator upon requests by the residents of this State or the
24 Department.
- 25 (10) The extent and degree of harm to residents of this State. In assessing
26 the extent and degree of harm, the Commissioner shall consider,
27 among other things, the amount of premiums and other consideration
28 paid by residents of this State for coverage issued by the violator, the
29 failure of the violator to pay claims made by residents of this State,
30 and number and dollar amount of claims made by residents of this
31 State that the violator has failed to pay.
- 32 (11) Whether the violator has a prior record of violating this Article or the
33 unauthorized insurance laws of any other state. "Prior record" includes
34 final administrative orders issued by the Commissioner or insurance
35 regulator of any other state; federal or state criminal convictions,
36 including pleas of guilty or nolo contendere; civil judgments; and
37 written settlement agreements of state administrative proceedings,
38 state or federal criminal proceedings, or civil lawsuits against the
39 violator or any entity of which the violator was either a principal or
40 owner."

41 **SECTION 3.5.** G.S. 58-28-10 is repealed.

42 **PART IV. RATE EVASION TECHNICAL AMENDMENTS.**

43 **SECTION 4.1.** G.S. 20-52(a)(4) reads as rewritten:

(4) A statement that the owner is an eligible risk for insurance coverage as defined in ~~G.S. 58-37-1~~ G.S. 58-37-1(4a)."

SECTION 4.2. G.S. 58-36-85(b) reads as rewritten:

"(b) Termination Restrictions. – An insurer shall not terminate a policy for a reason that is not specified in ~~G.S. 58-37-50(1) through (5) or G.S. 58-36-65(g), G.S. 58-2-164(g), 58-36-65(g), or 58-37-50.~~ A termination of a policy is not effective unless the insurer either has notified a named insured of the termination by sending a written termination notice by first class mail to the insured's last known address or is not required by this subsection to send a written termination notice. Proof of mailing of a written termination notice is proof that the notice was sent.

An insurer is not required to send a written termination notice if any of the following applies:

- (1) The insurer has manifested its willingness to renew the policy by issuing or offering to issue a renewal policy, a certificate, or other evidence of renewal.
- (2) The insurer has manifested its willingness to renew the policy by any means not described in subdivision (1) of this subsection, including mailing a premium notice or expiration notice by first class mail to the named insured and the failure of the insured to pay the required premium on or before the premium due date.
- (3) A named insured has given written notification to the insurer or its agent that the named insured wants the policy to be terminated."

PART V. MANAGED CARE RECORD RETENTION AMENDMENTS AND HMO TECHNICAL AMENDMENT.

SECTION 5.1. G.S. 58-50-61(n) reads as rewritten:

"(n) Maintenance of Records. – Every insurer and URO shall maintain records of each review performed and each appeal received or reviewed, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. These records shall be retained by the insurer and URO for a period of ~~three-five years or or, for domestic companies,~~ until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later."

SECTION 5.2. G.S. 58-50-62(d) reads as rewritten:

"(d) Maintenance of Records. – Every insurer shall maintain records of each grievance received and the insurer's review of each grievance, as well as documentation sufficient to demonstrate compliance with this section. The maintenance of these records, including electronic reproduction and storage, shall be governed by rules adopted by the Commissioner that apply to insurers. The insurer shall retain these records for ~~three-five years or or, for domestic companies,~~ until the Commissioner has adopted a final report of a general examination that contains a review of these records for that calendar year, whichever is later."

SECTION 5.3. G.S. 58-67-50(e) reads as rewritten:

"(e) Effective January 1, 1989, every health maintenance organization shall provide at least minimum cost and utilization information for group contracts of 100 or more subscribers on an annual basis when requested by the group. Such information shall be compiled in accordance with the Data Collection Form developed by the Standardized HMO Data Form Task Force as endorsed by the Washington Business Group on Health and the Group Health Association of America on November 19, 1986, and any subsequent amendments. In addition, beginning with data for the calendar year 1998, every HMO, for group contracts of 1,000 or more members, shall provide cost, use of service, prevention, outcomes, and other group-specific data as collected in accordance with the latest edition of the ~~Health Plan Employer Data and Information Set (HEDIS)~~ Healthcare Effectiveness Data and Information Set guidelines, as published by the National Committee for Quality Assurance. Beginning with data for the calendar year 1998, every HMO shall file with the Commissioner and make available to all employer groups, not later than July 1 of the following calendar year, a report of health benefit plan-wide experience on its costs, use of services, and other aspects of performance, in the ~~HEDIS~~ Healthcare Effectiveness and Information Set format."

PART VI. HEALTH INSURANCE RISK POOL AMENDMENTS.

SECTION 6.1. G.S. 58-50-180(c) reads as rewritten:

"(c) The initial appointments by the Governor and the General Assembly upon the recommendation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall serve a term of three years. The initial appointments by the Commissioner under sub-subdivisions a., b., and d. of subdivision (b)(3) of this section shall be for a term of two years. The initial appointments by the Commissioner under sub-subdivisions c., e., f., and g. of subdivision (b)(3) of this section shall be for a term of one year. All succeeding appointments shall be for terms of three years. Members shall not serve for more than two successive terms.

A Board member's term shall continue until the member's successor is appointed by the original appointing authority. Vacancies shall be filled by the appointing authority for the unexpired portion of the term in which they occur. A Board member may be removed by the appointing authority for cause.

The Board shall meet at least quarterly upon the call of the chair. A majority of the total membership of the Commission shall constitute a quorum.

The Commissioner shall appoint a chair to serve for the initial two years of the Plan's operation. Subsequent chairs shall be elected by a majority vote of the Board members and shall serve for two-year terms. Board members shall receive travel allowances under ~~G.S. 138-6~~ G.S. 138-5 when traveling to and from meetings of the ~~Board, Board or for official business of the Pool,~~ but shall not receive any ~~subsistence allowance or per diem under G.S. 138-5, subdivision (a)(1) of that section.~~

SECTION 6.2. G.S. 58-50-180(e)(1) reads as rewritten:

"(e) The Pool shall have the general powers and authority granted under the laws of this State to health insurers and the specific authority to do all of the following:

- (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this Part, including the authority, with the

1 approval of the Executive Director ~~in collaboration with~~ acting upon
2 the approval or authorization of the Board, to enter into contracts with
3 similar plans of other states for the joint performance of common
4 administrative functions or with persons or other organizations for the
5 performance of administrative functions."

6 **SECTION 6.3.** G.S. 58-50-185(a) reads as rewritten:

7 "(a) The Executive Director, ~~in collaboration with the~~ approval or authorization of
8 the Board, shall select through a competitive bidding process one or more insurers to
9 administer the Pool. The Executive Director shall evaluate bids submitted based on
10 criteria established by the Board. The criteria shall allow for the comparison of
11 information about each bidding administrator and selection of a Pool Administrator
12 based on at least the following:

- 13 (1) Proven ability to handle health insurance coverage to individuals.
- 14 (2) Efficiency and timeliness of the claim processing procedures.
- 15 (3) Estimated total charges for administering the Pool.
- 16 (4) Ability to apply effective cost containment programs and procedures
17 and to administer the Pool in a cost-efficient manner.
- 18 (5) Financial condition and stability.
- 19 (6) Evidence of authority to provide third-party administrative services in
20 North Carolina."

21 **SECTION 6.4.** G.S. 58-50-195(d) reads as rewritten:

22 "(d) Coverage under the Pool shall cease:

- 23 (1) On the date an individual is no longer a resident of this State.
- 24 (2) On the date an individual requests coverage to end.
- 25 (3) Upon the death of the covered individual.
- 26 (4) On the date State law requires cancellation of the Pool policy.
- 27 (5) At the option of the Pool, 30 days after the Pool makes any inquiry
28 concerning the individual's eligibility or residence to which the
29 individual does not reply.
- 30 (6) Because the individual has failed to make the payments required under
31 this Part.
- 32 (7) Because the individual has performed an act or practice that constitutes
33 fraud or made an intentional misrepresentation of material fact under
34 the terms of the coverage."

35 **SECTION 6.5.** G.S. 58-50-210 reads as rewritten:

36 "**§ 58-50-210. Preexisting conditions.**

37 (a) Except as otherwise provided by law, Pool coverage shall exclude charges or
38 expenses incurred during the first 12 months following the effective date of coverage as
39 to any condition for which medical advice, care, or treatment was recommended or
40 received as to such conditions during the 12-month period immediately preceding the
41 effective date of coverage, except that no preexisting condition exclusion shall be
42 applied to a federally defined eligible ~~individual~~ individual or an individual who is
43 eligible for the Pool because of his or her eligibility for the credit for health insurance

costs under the Trade Adjustment Assistance Reform Act of 2002, section 35 of the Internal Revenue Code of 1986, pursuant to G.S. 58-50-195(a)(6).

(b) ~~Subject to subsection (a) of this section, the preexisting condition exclusions shall be waived to the extent that similar exclusions, if any, have been satisfied under any prior health insurance coverage that was involuntarily terminated, provided that:~~

(1) ~~Application for Pool coverage is made not later than 63 days following the involuntary termination, and in such case coverage in the Pool shall be effective from the date on which the prior coverage was terminated; and~~

(2) ~~The applicant is not eligible for continuation or conversion rights that would provide coverage substantially similar to Pool coverage.~~

(c) The period of any preexisting condition exclusion shall be reduced by the aggregate of the periods of creditable coverage, if any, applicable as of the enrollment date. Credit for having satisfied some or all of the preexisting condition waiting period under previous creditable coverage, as defined in G.S. 58-51-17(a)(1), shall be provided in accordance with G.S. 58-51-17."

PART VII. PEO AMENDMENTS.

SECTION 7.1. The catch line of G.S. 58-89A-50 reads as rewritten:

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

SECTION 7.2. G.S. 58-89A-50(a) reads as rewritten:

"(a) An applicant for licensure shall file with the Commissioner a surety bond for the benefit of the Commissioner in the an amount of one hundred thousand dollars (\$100,000) in favor of the State of North Carolina equal to five percent (5%) of the applicant's prior year's total North Carolina wages, benefits, workers compensation premiums, and unemployment compensation contributions, but not greater than five hundred thousand dollars (\$500,000), or such greater amount as the Commissioner may require."

SECTION 7.3. G.S. 58-89A-10 is repealed.

SECTION 7.4. G.S. 58-89A-105 reads as rewritten:

"§ 58-89A-105. Employee benefit plans; required disclosure; other reports.

(a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. Any health insurance plan sponsored and maintained by a licensee shall only be fully insured by one of the following:

(1) A licensed insurance company that is authorized to write accident and health insurance, as defined in G.S. 58-7-15(3).

(2) A service corporation organized and licensed under Article 65 of this Chapter.

(3) A health maintenance organization organized and licensed under Article 67 of this Chapter.

(b) ~~A client company may sponsor and maintain employee benefit plans for the benefit of assigned employees.~~

(c) ~~If a licensee offers to its assigned employees any health benefit plan that is not fully insured by an authorized insurer, the plan shall:~~

(1) ~~Utilize a third-party administrator licensed or registered to do business in this State;~~

(2) ~~Hold all plan assets, including participant contributions, in a trust account; and~~

(3) ~~Provide sound reserves for the plan as determined using generally accepted actuarial standards.~~

(d) ~~For purposes of this section, a "health benefit plan that is not fully insured by an authorized insurer" includes any arrangement except an arrangement under which an insurance company licensed to write insurance in this State has issued an insurance policy that covers all of the obligations of the health benefit plan.~~ For the purposes of this section, a health insurance plan is fully insured only if all of the benefits provided under the plan are covered by an approved policy issued by one or more of the entities specified in subsection (a) of this section. A health insurance plan is not fully insured if the plan is any form of stop-loss insurance or any other form of reinsurance.

(e) Existing licensees shall comply with subsection (a) of this section by October 1, 2009. Before October 1, 2009, if an existing licensee sponsors and maintains any health insurance plan that is not fully insured by one or more of the entities specified in subsection (a) of this section, the licensee shall do all of the following:

(1) Use a third-party administrator licensed or registered under Article 56 of this Chapter.

(2) Hold all plan assets, including participant contributions, in a trust account.

(3) Provide sound reserves for the plan as determined by generally accepted actuarial standards."

PART VIII. CODE OFFICIALS QUALIFICATION BOARD AMENDMENTS.

SECTION 8.1. G.S. 143-151.13(a) reads as rewritten:

"(a) ~~No person may~~ shall engage in Code enforcement ~~pursuant to under~~ this Article unless ~~he~~ that person possesses one of the following types of certificates, currently valid, issued by the Board attesting to ~~his~~ that person's qualifications to ~~hold such position~~ engage in Code enforcement: (i) a standard certificate; (ii) a limited certificate provided for in subsection ~~(e);(c)~~ (c);(c) of this section; or (iii) a probationary certificate provided for in subsection ~~(d);(d)~~ (d);(d) of this section. To obtain a standard certificate, a person must pass an examination, as prescribed by the ~~Board, which Board~~ or by a contracting party under G.S. 143-151.16(d), that is based on the North Carolina State Building Code and administrative procedures required to enforce the Code, for Code enforcement. The Board ~~shall~~ may issue a standard certificate of qualification to each person who successfully completes the ~~examination authorizing the person named therein~~ examination. The certificate authorizes that person to engage in Code enforcement and to practice as a qualified Code-enforcement official in North Carolina. The certificate of qualification shall bear the signatures of the chairman and secretary of the Board."

SECTION 8.2. G.S. 143-151.16(d) reads as rewritten:

"(d) ~~The Board may establish and collect a fee to be paid by each applicant for examination in an amount not to exceed one hundred twenty five dollars (\$125.00). In~~

1 addition, the Board may establish and collect a fee to be paid by each applicant applying
2 for a review of the applicant's examination. The amount of the examination review fee
3 shall not exceed fifty dollars (\$50.00). Examination and examination review fees may
4 be paid directly to approved testing services that maintain regional facilities for the
5 purpose of administering the Board's examinations. The Board may contract with
6 persons for the development and administration of the examinations required by
7 G.S. 143-151.13(a), for course development related to the examinations, for review of a
8 particular applicant's examination, and for other related services. The person with whom
9 the Board contracts may charge applicants a reasonable fee for the costs associated with
10 the development and administration of the examinations, for course development related
11 to the examinations, for review of the applicant's examinations, and for other related
12 services. The fee shall be agreed to by the Board and the other contracting party. The
13 amount of the fee under this subsection shall not exceed one hundred seventy-five
14 dollars (\$175.00). Contracts for the development and administration of the
15 examinations, for course development related to the examinations, and for review of
16 examinations shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General
17 Statutes or to Article 3D of Chapter 147 of the General Statutes."

18 **PART IX. PROHIBITION AGAINST FREE INSURANCE.**

19 **SECTION 9.1.** Chapter 66 of the General Statutes is amended by adding a
20 new Article to read:

21 "Article 44.

22 "Free Insurance.

23 **"§ 66-380. Definitions.**

24 As used in this Article:

- 25 (1) "Consumer goods" means goods that are used primarily for personal,
26 family, or household purposes. For the purposes of this Article,
27 consumer goods do not include automobiles or residences.
- 28 (2) "Free insurance" means any of the following:
- 29 a. Insurance for which no identifiable or additional charge is made
30 to the purchaser or lessee of consumer goods or services
31 directly or indirectly connected with the purchase of consumer
32 goods.
- 33 b. Insurance for which an identifiable or additional charge is made
34 in an amount less than the cost of such insurance as to the
35 seller, lessor, or other person other than the insurer providing
36 the insurance.

37 **"§ 66-381. Free insurance.**

38 No person shall advertise, offer, or provide free insurance for damage, loss, or theft
39 as an inducement to the purchase, sale, or rental of consumer goods or services directly
40 or indirectly connected with the purchase of consumer goods.

41 **"§ 66-382. Unfair trade practice.**

42 A violation of G.S. 66-381 constitutes an unfair trade practice under G.S. 75-1.1."

43 **PART X. MISCELLANEOUS CHANGES.**

44 **SECTION 10.1.** G.S. 58-21-65(b) reads as rewritten:

1 "(b) The Commissioner shall issue a surplus lines license to any qualified holder
2 of a current ~~fire and casualty property~~ broker's or agent's license, but only when the
3 broker or agent has:

- 4 (1) Remitted the fifty dollars (\$50.00) annual fee to the Commissioner;
- 5 (2) Submitted a completed license application on a form supplied by the
6 Commissioner, and the application has been approved by the
7 Commissioner;
- 8 (3) Passed a qualifying examination approved by the Commissioner;
9 except that all holders of a license prior to July 11, 1985 shall be
10 deemed to have passed such an examination; and
- 11 (4) Repealed by Session Laws 2004-199, s. 20(c), effective August 17,
12 2004."

13 **PART XI. SEVERABILITY.**

14 **SECTION 11.1.** If any section or provision of this act is declared
15 unconstitutional, preempted, or otherwise invalid by the courts, it does not affect the
16 validity of the act as a whole or any part other than the part so declared to be
17 unconstitutional, preempted, or otherwise invalid.

18 **PART XII. EFFECTIVE DATES.**

19 **SECTION 12.1.** Part I of this act becomes effective January 1, 2009, and
20 applies to policies issued or renewed on or after that date. Part III of this act is effective
21 when it becomes law and applies to violations that occur on or after that date. Parts VI
22 and VII of this act become effective October 1, 2008. Part IX of this act becomes
23 effective October 1, 2008, and applies to violations that occur on or after that date. The
24 remainder of this act is effective when it becomes law.

PUBLIC BILL

~~Proposed~~ Committee Substitute For
H.B. 1489

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE PROTECTION OF CONSUMERS IN LIFE SETTLEMENT
TRANSACTIONS.

Introduced by Representative(s): *Holliman (Primary Sponsor)*

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

Committee on Insurance
Majority being present, having considered
bill, recommend that it do ☒ pass
Rep. Holliman + Goforth
~~For the Committee~~

FAVORABLE TO COMM. SUB
UNFAVORABLE TO BILL

MAY 23 2007

366 AND PLACED ON
CALENDAR FOR

MAY 23 2007

118-061 ✓
PASSED 2nd & 3rd
READING

MAY 24 2007

ORDERED SENT TO SENATE

Denise Weeks

RECEIVED

MAY 25 2007

From House of Representatives
By Clerk *SP 8:20* (AM/PM)

PASSED 1st READING
MAY 29 2007
AND REFERRED TO COMMITTEE
ON Commerce, Trade

Bus + Entrepreneurship

Fiscal Note Attached JUL 23 2007

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 1489 (Second Edition)

SHORT TITLE: Protect Consumers/Life Settlement Transaction.

SPONSOR(S): Representative Holliman

	FISCAL IMPACT				
	Yes ()	No (X)	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
EXPENDITURES:	\$0	\$0	\$0	\$0	\$0
POSITIONS (cumulative):	0	0	0	0	0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance.					
EFFECTIVE DATE: October 1, 2007.					

BILL SUMMARY: This bill adds a new definitions section of proposed Part 6 of Article 58, G.S. Chapter 58, concerning life settlement transactions, and adds Life Settlements to the title of Article 58 of G.S. Chapter 58.

Source: Bill Digest H.B. 1489 (04/16/0200).

ASSUMPTIONS AND METHODOLOGY: As this bill adds nothing more than routine duties and responsibilities to those which the Department of Insurance already undertakes, there is no fiscal impact associated with this legislation.

SOURCES OF DATA: Department of Insurance.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Brian Reynolds and Doug Holbrook.

Brian Reynolds *DH Holbrook*

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Lynn Muchmore

DATE: July 23, 2007

JUL 23 2007

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 1489
Committee Substitute Favorable 5/23/07

Short Title: Protect Consumers/Life Settlement Transaction.

(Public)

Sponsors:

Referred to:

April 17, 2007

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR THE PROTECTION OF CONSUMERS IN LIFE
SETTLEMENT TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by
adding a new Part to read:

"Part 6. Life Settlement Transactions.

"§ 58-58-320. Definitions.

For the purposes of this Part:

(1) "Life settlement contract" means a written agreement establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the owner's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. However, the minimum value of a life settlement contract shall be greater than the cash surrender value or accelerated death benefit available at the time of an application for the life settlement contract. Except as provided by sub-subdivision (3)c. of this section, "life settlement contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns the policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts.

"Life settlement contract" includes a premium finance loan made for a life insurance policy by a lender to an owner on, before, or after the date of issuance of the policy if any of the following conditions apply:

a. The loan proceeds are not used solely to pay (i) premiums for the policy or (ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and

1 similar fees, closing costs, legal fees and expenses, trustee fees
2 and expenses, and third-party collateral provider fees and
3 expenses, including fees payable to letter of credit issuers.

4 b. The owner or the insured receives on the date of the premium
5 finance loan a guarantee of a future life settlement value of the
6 policy.

7 c. The owner or the insured agrees on the date of the premium
8 finance loan to sell the policy or any portion of its death benefit
9 on any date following the issuance of the policy.

10 "Life settlement contract" does not include any of the following:

11 a. A policy loan or accelerated death benefit provision contained
12 in the life insurance policy, whether issued with the original
13 policy or as a rider.

14 b. A loan made by a bank or other licensed financial institution in
15 which the lender takes an interest in a life insurance policy
16 solely to secure repayment of the loan or, if there is a default on
17 the loan and the policy is transferred, the further assignment of
18 the policy by the lender, provided that the default itself is not
19 pursuant to an agreement or understanding with any other
20 person for the purpose of evading regulation under this Part.

21 c. A loan made by a lender that does not violate Article 35 of this
22 Chapter, provided that the premium finance loan is not
23 described in the definition of life settlement contract above.

24 d. An agreement where all the parties are closely related to the
25 insured by blood or law or have a lawful substantial economic
26 interest in the continued life, health, and bodily safety of the
27 person insured, or are trusts established primarily for the benefit
28 of the parties.

29 e. Any designation, consent, or agreement by an insured who is an
30 employee of an employer in connection with the purchase by
31 the employer, or trust established by the employer, of life
32 insurance on the life of the employee.

33 f. A bona fide business succession planning arrangement
34 established by any of the following:

35 1. An agreement between one or more shareholders in a
36 corporation or between a corporation and one or more of
37 its shareholders.

38 2. A trust established by shareholders of a corporation.

39 3. An agreement between one or more partners in a
40 partnership or between a partnership and one or more of
41 its partners.

42 4. A trust established by the partners of a partnership.

- 1 5. An agreement between one or more members of a
2 limited liability company or between a limited liability
3 company and one or more of its members.
4 6. A trust established by the members of a limited liability
5 company.
6 g. An agreement entered into by a service recipient and a service
7 provider, a trust established by the service recipient, or a trust
8 established by the service provider who performs significant
9 services for the service recipient's trade or business.
10 h. Any other contract, transaction, or arrangement exempted from
11 the definition of life settlement contract by the Commissioner
12 based on a determination that the contract, transaction, or
13 arrangement is not of the type intended to be regulated under
14 this Part.
15 (2) "Owner" means the owner of a life insurance policy or a certificate
16 holder under a group policy, with or without a terminal illness, who
17 enters or seeks to enter into a life settlement contract. For the purposes
18 of this Part, an owner shall not be limited to an owner of a life
19 insurance policy or a certificate holder under a group policy that
20 insures the life of an individual with a terminal or chronic illness or
21 condition except where specifically addressed. "Owner" does not
22 include any of the following:
23 a. Any provider or other licensee under this Part.
24 b. A qualified institutional buyer as defined in Rule 144A of the
25 Federal Securities Act of 1933, as amended.
26 c. A financing entity.
27 d. A special purpose entity.
28 e. A related provider trust.
29 (3) "Provider" means a person, other than an owner, who enters into or
30 effectuates a life settlement contract with an owner. "Provider" does
31 not include any of the following:
32 a. Any bank, savings bank, savings and loan association, credit
33 union, or other licensed lending institution which takes an
34 assignment of a life insurance policy or certificate issued
35 pursuant to a group life insurance policy solely as collateral for
36 a loan.
37 b. A premium finance company making premium finance loans
38 and exempted by the Commissioner from the licensing
39 requirement under Article 35 of this Chapter that takes an
40 assignment of a life insurance policy solely as collateral for a
41 loan.
42 c. The issuer of the life insurance policy.
43 d. Any natural person who enters into or effectuates no more than
44 one agreement in a calendar year for the transfer of a life

1 insurance policy or certificate issued pursuant to a group life
2 insurance policy for compensation or anything of value less
3 than the expected death benefit payable under the policy.

4 e. A purchaser of a life settlement.

5 f. Any authorized or eligible insurer that provides stop-loss
6 coverage or financial guaranty insurance to a provider,
7 purchaser, financing entity, special purpose entity, or related
8 provider trust.

9 g. A financing entity.

10 h. A special purpose entity.

11 i. A related provider trust.

12 j. A broker.

13 k. An accredited investor or qualified institutional buyer as
14 defined respectively in Regulation D, Rule 501, or Rule 144A
15 of the Federal Securities Act of 1933, as amended, who
16 purchases a life settlement policy from a life settlement
17 provider."

18 **SECTION 2.** The title of Article 58 of Chapter 58 of the General Statutes
19 reads as rewritten:

20 "Article 58.

21 Life Insurance and Viatical Settlements.

22 Life Insurance, Viatical Settlements, and Life Settlements."

23 **SECTION 3.** This act becomes effective October 1, 2007.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 1489
Committee Substitute Favorable 5/23/07
PROPOSED COMMITTEE SUBSTITUTE H1489-CSME-6 [v.8]

6/20/2008 2:53:56 PM

Short Title: Protect Consumers/Life Settlement Transaction.

(Public)

Sponsors:

Referred to:

April 17, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE PROTECTION OF CONSUMERS IN LIFE
3 SETTLEMENT TRANSACTIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 58-58-205 reads as rewritten:

6 "**§ 58-58-205. Definitions.**

7 As used in this Article:

8 ...

9 (5) "Fraudulent viatical settlement act" includes:

10 a. Acts or omissions committed by any person who, knowingly
11 and with intent to defraud, for the purpose of depriving another
12 of property or for pecuniary gain, commits, or permits its
13 employees or its agents to engage in acts including:

14 1. Presenting, causing to be presented, or preparing with
15 knowledge or belief that it will be presented to or by a
16 viatical settlement provider, viatical settlement broker,
17 viatical settlement purchaser, financing entity, insurer,
18 insurance producer, viator, insured or any other person
19 false material information, or concealing material
20 information, as part of, in support of, or concerning a
21 fact material to one or more of the following:

22 I. An application for the issuance of a viatical
23 settlement contract or insurance policy.

24 II. The underwriting of a viatical settlement contract
25 or insurance policy.

26 III. A claim for payment or benefit under a viatical
27 settlement contract or insurance policy.

- IV. Premiums paid on an insurance policy.
- V. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy.
- VI. The reinstatement or conversion of an insurance policy.
- VII. The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy.
- VIII. The issuance of written evidence of viatical settlement contract or insurance.
- IX. A financing transaction.
2. Employing any device, scheme, or artifice to defraud related to viaticated policies.
3. Entering into stranger-originated life insurance.
4. Failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy.
- (6) "Policy" means an individual or group life insurance policy, group life insurance certificate, group life insurance contract, or any other arrangement of life insurance affecting the rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery in this State.
- (6a) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in that life insurance policy.
- (7) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.
- (8) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed viatical settlement provider.
- (8a) "Stranger-originated life insurance" or "STOLI" means an act, practice, or arrangement to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy himself or itself, and where, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or

indirectly transfer the ownership of the policy and/or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in G.S. 58-58-205(11)c.

(9) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or fewer.

(10) "Viatical settlement broker" or "broker" means a person that on behalf of a viator and for a fee, commission, or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

~~(11) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the policy. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by a policy, other than a loan by a life insurance company under the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.~~

(11) a. "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. "Viatical settlement contract" includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State.

- 1 b. "Viatical settlement contract" includes a premium finance loan
2 made for a life insurance policy by a lender to viator on, before
3 or after the date of issuance of the policy where:
4 1. The viator or the insured receives on the date of the
5 premium finance loan a guarantee of a future viatical
6 settlement value of the policy; or
7 2. The viator or the insured agrees on the date of the
8 premium finance loan to sell the policy or any portion of
9 its death benefit on any date following the issuance of
10 the policy.
11 c. "Viatical settlement contract" does not include:
12 1. A policy loan or accelerated death benefit made by the
13 insurer pursuant to the policy's terms;
14 2. Loan proceeds that are used solely to pay:
15 I. Premiums for the policy;
16 II. The costs of the loan, including, without
17 limitation, interest, arrangement fees, utilization
18 fees and similar fees, closing costs, legal fees and
19 expenses, trustee fees and expenses, and third
20 party collateral provider fees and expenses,
21 including fees payable to letter of credit issuers;
22 3. A loan made by a bank or other licensed financial
23 institution in which the lender takes an interest in a life
24 insurance policy solely to secure repayment of a loan or,
25 if there is a default on the loan and the policy is
26 transferred, the transfer of such a policy by the lender,
27 provided that neither the default itself nor the transfer of
28 the policy in connection with such default is pursuant to
29 an agreement or understanding with any other person for
30 the purpose of evading regulation under this Article;
31 4. A loan made by a lender that does not violate Article 35
32 of this Chapter, provided that the premium finance loan
33 is not described in sub-subdivision b. of this subdivision;
34 5. An agreement where all the parties (i) are closely related
35 to the insured by blood or law or (ii) have a lawful
36 substantial economic interest in the continued life,
37 health, and bodily safety of the person insured, or are
38 trusts established primarily for the benefit of such
39 parties;
40 6. Any designation, consent or agreement by an insured
41 who is an employee of an employer in connection with
42 the purchase by the employer, or trust established by the
43 employer, of life insurance on the life of the employee;
44 7. A bona fide business succession planning arrangement:

- I. Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders;
- II. Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or
- III. Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members;
8. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
9. Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the Commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this Article.
- (12) "Viatical settlement provider" or "provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract on residents of this State or residents of another state from offices within this State. "Viatical settlement provider" or "provider" does not include:
- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
 - b. The issuer of a life insurance policy providing accelerated benefits under rules adopted by the Commissioner and under the contract;
 - c. An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
 - d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
 - e. A financing entity;
 - f. A special purpose entity;
 - g. A related provider trust;
 - h. A viatical settlement purchaser; or

- i. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider.

..."

SECTION 2. G.S. 58-58-225(a) reads as rewritten:

"§ 58-58-225. Reporting requirements and privacy.

(a) Each licensee licensed provider shall file with the Commissioner on or before June 1 of each year an annual statement containing such information as the Commissioner prescribes by administrative rule. In addition to any other requirements, for each policy settled within five years after policy issuance, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. This information shall be limited to only those transactions where the viator is a resident of this State and shall not include individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, or health information of the viator or insured."

SECTION 3. Part 5 of Article 58 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-58-256. Prohibited practices and conflicts of interest.

(a) With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with that viatical settlement broker, unless such relationship is disclosed to the viator.

(b) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract, unless such relationship is disclosed to the viator.

(c) A violation of subsection (a) or (b) of this section is a fraudulent viatical settlement act.

(d) No person shall issue, solicit, market, or otherwise promote the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy.

(e) No person providing premium financing shall receive any proceeds, fees, or other consideration from the policy or owner of the policy that is in addition to the amounts required to pay principal, interest, and any other reasonable costs or expenses in type and amount incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on the loan

1 or transfer of the policy in connection with the default occurs pursuant to an agreement
2 or understanding with any other person for the purpose of evading regulation under this
3 act. Any payments, charges, fees, or other amounts received by a person providing
4 premium financing in violation of this subsection shall be remitted to the original owner
5 of the policy or to the estate of the owner if the owner is deceased at the time of the
6 determination of the overpayment.

7 (f) In the solicitation, application or issuance of a life insurance policy, no person
8 shall employ any device, scheme or artifice in violation of G.S. 58-58-70,
9 G.S. 58-58-75, G.S. 58-58-80, G.S. 58-58-85, G.S. 58-58-86, G.S. 58-58-90, or
10 G.S. 58-58-91.

11 (g) No viatical settlement provider shall enter into a viatical settlement contract
12 unless the viatical settlement promotional, advertising, and marketing materials, as may
13 be prescribed by regulation, have been filed with the commissioner. In no event shall
14 any marketing materials expressly reference that the insurance is "free" for any period
15 of time. The inclusion of any reference in the marketing materials that would cause a
16 viator to reasonably believe that the insurance is free for any period of time shall be
17 considered a violation of this Article.

18 (h) No life insurance producer, insurance company, viatical settlement broker, or
19 viatical settlement provider shall make any statement or representation to the applicant
20 or policyholder in connection with the sale or financing of a life insurance policy to the
21 effect that the insurance is free or without cost to the policyholder for any period of time
22 unless provided in the policy."

23 **SECTION 4.** Part 3 of Article 58 of Chapter 58 of the General Statutes of
24 North Carolina is amended by adding a new section to read:

25 **"§ 58-58-91. Insurable interest in the person; consent required; exceptions.**

26 (a) As used in this section:

27 (1) "Insurable interest" means:

28 a. In the case of persons closely related by blood or by law, a
29 substantial interest engendered by love and affection.

30 b. In the case of other persons, a lawful and substantial economic
31 interest in the continued life, health, or bodily safety of the
32 person insured, as distinguished from an interest that would
33 arise only by, or would be enhanced in value by, the death,
34 disablement, or injury of the person insured.

35 (2) "Contract of insurance" means a policy of life insurance, as described
36 in G.S. 58-7-15, or a policy of accident and health insurance, as
37 described in G.S. 58-7-15.

38 (3) "Person insured" means the natural person, or persons, whose life,
39 health, or bodily safety is insured under a contract of insurance.

40 (b) Any person of lawful age may on his or her own initiative procure or effect a
41 contract of insurance upon his or her own person for the benefit of any person. Nothing
42 in this section prohibits the immediate transfer or assignment of a contract so procured
43 or effectuated.

1 (c) No person shall procure or cause to be procured, directly or by assignment or
2 otherwise, any contract of insurance upon another person unless the benefits under that
3 contract of insurance are payable to:

4 (1) The person insured or that person's personal representative; or

5 (2) A person having, at the time the contract of insurance is made, an
6 insurable interest in the person insured under the contract of insurance.

7 (d) If there is any conflict between this section and Part 5 of this Article, Part 5 of
8 this Article controls."

9 **SECTION 5.** This act becomes effective October 1, 2008.



HOUSE BILL 1489: Protect Consumers/Life Settlement Transaction

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	June 23, 2008
Introduced by:	Rep. Holliman	Summary by:	Tim Hovis
Version:	PCS to Second Edition H1489-CSME-6[v.8]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1489 makes various changes to the law governing viatical settlements. A "viatical settlement" is the payment of compensation for the benefits of a life insurance policy in return for the policy owner's (viator's) assignment, sale, devise, bequest or transfer of the death benefit or ownership of the policy.*

BILL ANALYSIS: Section 1 of the bill makes changes to G.S. 58-58-205, **Definitions**, including the following:

- Adds to the definition of a "fraudulent viatical settlement act" (1) entering into stranger-originated life insurance (see definition below) or (2) failing to disclose to the insurer when requested that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives.
- Adds a definition of "premium finance loan" to mean a loan primarily made to pay premiums on a life insurance policy and which is secured by an interest in the policy.
- Adds a definition of "stranger-oriented life insurance" or "STOLI" to mean an act to initiate a life insurance policy for the benefit of a third party investor who, at the time of the policy origination, has no insurable interest in the insured. STOLI includes policies purchased with the resources of a third party who could not lawfully initiate the policy where there is an agreement to transfer the ownership of the policy or policy benefits to a third party.
- Deletes the current definition of "viatical settlement contract" and rewrites the definition to include (1) the transfer of interest in a trust that owns a life insurance policy if the trust was formed to or availed to for the purpose of acquiring life insurance contracts or (2) a premium finance loan for a life insurance policy made to a viator before, on or after the date of issuance where the viator receives on the date of the loan a future settlement value of the policy or the viator agrees to sell the policy following the policy's issuance.
- "Viatical settlement contract" does not include a policy loan or accelerated death benefit made by an insurer, loan proceeds used to pay policy premiums or the costs of the loan, bank or financial institution loans in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan, a premium finance loan that is not included in the definition of a viatical settlement contract, agreements where all of the parties are closely related by blood to the insured or have a lawful substantial economic interest in the life of the insured, any designation or agreement by an insured in connection with the purchase of life insurance by the insured's employer, certain business succession planning arrangements, agreements entered into by a service recipient and a service provider who performs significant services for the recipient's business, any other contract exempted by the Commissioner as not intended to be regulated by the Article.

House Bill 1489

Page 2

Section 2 amends **G.S. 58-225, Reporting requirements and privacy**, to provide that licensed viatical settlement providers shall include in annual statements filed with the Commissioner the total number, aggregate face amount, and life settlement proceeds of policies settled during the preceding calendar year. This information is required only for those policies settled within five years of issuance. The information is limited to transactions where the viator is a State resident and shall not include data that could compromise the privacy of the viator's or insured's personal, financial, or health information.

Section 3 adds a new section, **G.S. 58-58-256, Prohibited practices and conflicts of interest**, to prohibit the following: (1) a broker from knowingly soliciting an offer or effectuating an agreement to a settlement provider that is controlled by or under common control with the broker, unless the relationship is disclosed to the viator; or (2) a provider from entering into an agreement with a viator if anything of value will be paid to a broker that is controlled by or under common control with the provider or settlement purchaser, unless the relationship is disclosed to the viator. A violation is a fraudulent viatical settlement act.

This section also prohibits a person from issuing or promoting the purchase of a policy for the purpose of or with an emphasis on settling the policy.

A person offering premium financing is prohibited from receiving any proceeds, fees or other consideration from the policy other than monies paid for principal, interest, and any other reasonable costs, except in the case of default. Amounts received in violation of this subsection shall be remitted to the policy owner or the owner's estate.

Persons are prohibited from soliciting or issuing a life insurance policy for which an insurable interest does not exist under Part 3 of Article 58 of Chapter 58. Insurable interests under this section include stockholders, partners, charitable organizations, relationships by blood or by law, or lawful economic interests.

A provider shall not enter into a viatical settlement agreement unless all promotional, advertising, and marketing materials have been filed with the Commissioner and shall not use any materials referencing the insurance as "free."

A life insurance producer, insurance company, viatical settlement broker, or provider shall not make any statement to an applicant or policyholder in connection with the sale or financing of life insurance to the effect that the insurance is free or without cost to the policyholder unless provided in the policy.

Section 4 of the Proposed Committee Substitute for H1489 adds a new section to **Part 3 of Article 58, Life Insurance and Viatical Settlements, of Chapter 58 of the General Statutes**. The new **G.S. 58-58-91, Insurable interest**, would define an "insurable interest" as one of the following: (1) in the case of persons closely related by blood or law, a substantial interest engendered by love and affection and (2) in the case of other persons a lawful and substantial economic interest in the continued life, health, or bodily safety of the person insured as distinguished from an interest arising only or enhanced by the death, disablement, or injury of the person insured.

This section provides that any person of lawful age may on his or her own initiative procure or effect a contract of insurance upon his or her own person for the benefit of any person.

Contracts of insurance upon another person are prohibited unless the contract is payable to the person insured or that person's personal representative or payable to a person having an insurable interest in the person insured.

EFFECTIVE DATE: The Proposed Committee Substitute for House Bill 1489 becomes effective October 1, 2008.

House Bill 1489

Page 3

H1489e2-SMRG-CSME-6

VISITOR REGISTRATION SHEET

Name of Committee
SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date *June 24, 2008*

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Debra DeCamillis	IOG
Tom VITAGLIONE	CFTF
Matt Whittle	Goldstone news - Argus
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
ROBERT ZIMMERS	NC NOAA
CS Hollis	KCC
Courtney A. Quinn	Capitol
Peyton Maynard	82
Kevin Sw	Hille
Colleen Kochanek	AANK

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Glenn Ingram	SmAC Insurance
Rick Techini	NC Assoc. of Teachers
R. Paul Wilms	NCHBA
Jessica Hayes	NC Home Builders Assn.
Steve Skow	Nc Pediatric Society
Dary Hunt	DENR
Sharon Stroud	State Energy Office
Selena Childs	CFTF

VISITOR REGISTRATION SHEET

Name of Committee
SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Mark M. Smith	Payne & Spruell
Jim Long	NCDOT
Bob	Bole Hill & Thayer
Susan Valaeri	Nationwide
Dick Taylor	NOAA
Scott Gronow	ONK ENERGY
Bill McQuay	PSNC Energy
Kevin Leonard	KSP

VISITOR REGISTRATION SHEET

Name of Committee
SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Andrew Cagle	Bane + Assoc
Larry Shirky	State Energy Office
James Green	Intern for Senator Doug Berger
Claire Hunter	MWC
David Spoller	State Farm
Daniel Roun	KENNEDY CONVENT
W. Daniel Amburn	Electricities of N.C., Inc.
Amy McConkey	Smith Anderson
Chip Biggett	NCMS
Skip Sprye	NAIFA - NC
Robert Paschal	Young Moore

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Will Culpeper	Moore & Van Allen
Cameron Henley	Electric Cities of NC, Inc.
Cliff Seible	Gov's office
Midelle Frazier	MFS
RODNEY PHILLIPS	FARMERS INS. GROUP
Melissa Tordella	NCACC
JAN ANDREWS	DEPT. INSURANCE
EK SPREUKEL	NC DOT
MIKE MANN	SSI
JULIAN PHILPOT	NCFB
Don McCargydale	SAS

VISITOR REGISTRATION SHEET

Name of Committee
SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

June 24, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrick Byrnes	MMR 8
Larry Heckner	HSBC North America ^{Wilmington} NC
Aana Wherry	NCUN
Marjorie L. Linn	OCALP
John D. Linn	JDALPA
Mike Remy	BEBSNC
Alberto Contador	Astena
John R. Linn	ALCFPC
Paul Ribeiro	NCFPC
Abigail Riley	DPH-NSB
Tara Carr	DPH-NSB

Principal Clerk

Reading Clerk

AMENDED NOTICE
BILL ADDED: House Bill 2463

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Tuesday	July 1, 2008	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 2487	Change Format of Drivers Licenses/Under 21.	Representative Faison Representative Folwell Representative Pierce Representative McElraft
HB 2463	Regulate Mortgage Servicers.	Representative Carney Representative Blue Representative Church, Sr.

Senator R. C. Solès, Jr., Chair

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, July 1, 2008, 11:00 AM
1027 LB

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 2487 Change Format of Drivers
 Licenses/Under 21.

HB 2463 Regulate Mortgage Servicers.

Representative Faison
Representative Folwell
Representative Pierce
Representative McElraft
Representative Carney
Representative Blue
Representative Church,
Sr.

Presentations

Other Business

Adjournment

Senate Commerce, Small Business and Entrepreneurship Committee
Tuesday, July 1, 2008
Room 1027, Legislative Building

MINUTES

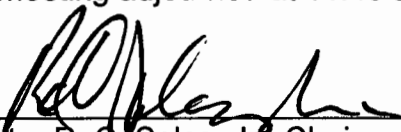
The Senate Commerce, Small Business and Entrepreneurship Committee met on Tuesday, July 1, 2008, at 11:00 a.m. in Room 1027 of the Legislative Building. Nineteen members of the Committee were present. Senator Soles recognized the following Pages assisting with the meeting: Taylor Woolard, Washington, sponsored by Senator Basnight; Walker Flythe and Cawood Simpson, Winston-Salem, sponsored by Senator Brunstetter; Katrina Conner, Raleigh, sponsored by Senator Hunt; Katy Searcy, Morganton, sponsored by Senator Jacumin; Adam Craven, Hope Mills, sponsored by Senator Rand; and Josh Kramer, Whiteville, sponsored by Senator Soles.

Senator Soles stated that the first order of business would be to consider H.B. 2487, Change Format of Drivers Licenses/Under 21, sponsored by Representatives Faison, Folwell, Pierce, and McElraft. Senator Hoyle moved for adoption of the Senate Committee Substitute bill for discussion purposes. Representative Folwell explained the bill, and after questions by members regarding the passage of this bill and the similar bill sponsored by Senator Bingham in the Senate previously considered by the committee, Senator Soles displaced the bill until a decision could be made as to which bill should be reported.

The next order of business was H.B. 2463, Regulate Mortgage Servicers, sponsored by Representatives Carney, Blue and Church. Representative Church was present to explain the bill. After questions by members, Senator Nesbitt offered Amendment No. 1 which was adopted. McNeil Chestnut, representing the Attorney General's office, was recognized to answer additional questions from committee members. Senator Hoyle moved for a favorable report of the committee substitute bill, as amended. Motion carried.

Senator Soles received communication from Senator Bingham expressing his support for the committee's favorable consideration of the House version of the bill regarding the Change Format of Drivers Licenses/Under 21, H.B. 2487. Senator Blake moved for a favorable report of the senate committee substitute bill for H.B. 2487. Motion carried.

The meeting adjourned at 11:45 a.m.


Senator R. C. Soles, Jr., Chairman


Ramona Fitzgerald, Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Tuesday, July 01, 2008

Senator SOLES, 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) 2463	Regulate Mortgage Servicers.	
	Draft Number:	PCS 80629
	Sequential Referral:	Finance
	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) 2487	Change Format of Drivers Licenses/Under 21.	
	Draft Number:	PCS 10485
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comments:

PUBLIC BILL

Proposed Committee Substitute For
S.B. 2487

SESSION LAW _____

ID = SB 1891

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

Introduced by Representative(s): ^{Folwell} Pierce, McElraft, Faison (primary Sponsors)

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

Committee on Transportation
majority being present, having considered
this bill, recommend that it do ☒ pass.

becky carney
For the Committee

and be referred to
Appropriations

☒ FAVORABLE TO COMM. SUB.
☐ UNFAVORABLE TO BILL

JUN 5 2008

AND PLACED ON
CALENDAR FOR

re-referred to
Appropriations

ON MOTION OF
REP. Quinn
WITHDRAWN FROM
Appropriations

JUN 17 2008

RECOMMITTED TO

Maell
AMENDMENT NO. 1 JUN 18 2008
ADOPTED 114-1 EV

PASSES 2nd READING
115-1 EV
116-0 (adj)
JUN 18 2008
AND PLACED ON THE
CALENDAR

Sutton
AMENDMENT NO. 2 JUN 19 2008
ADOPTED 68-46 EV

Passed 3rd Reading
115-0 EV
JUN 19 2008
AND ORDERED ENGROSSED
AND SENT TO SENATE

Denise Weeks

RECEIVED

JUN 20 2008

From House of Representatives
By Clerk SP-100 AM/PM

PASSED 1st READING
JUN 23 2008
AND REFERRED TO COMMITTEE
ON Commerce

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

3

HOUSE BILL 2487*

Committee Substitute Favorable 6/5/08

Third Edition Engrossed 6/19/08

Short Title: Change Format of Drivers Licenses/Under 21.

(Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

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

"(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

The Commissioner may waive the requirement of a color photograph on a license if the license holder proves to the satisfaction of the Commissioner that taking the

1 photograph would violate the license holder's religious convictions. In taking
2 photographs of license holders, the Division must distinguish between license holders
3 who are less than 21 years old and license holders who are at least 21 years old by using
4 different color backgrounds or borders for each group. The Division shall determine the
5 different colors to be used. The Commissioner shall ensure that applicants 21 years old
6 or older are issued drivers licenses and special identification cards that are printed in a
7 horizontal format. The Commissioner shall ensure that applicants under the age of 21
8 are issued drivers licenses and special identification cards that are printed in a vertical
9 format, that distinguishes them from the horizontal format, for ease of identification of
10 individuals under age 21 by members of industries that regulate controlled products that
11 are sale restricted by age and law enforcement officers enforcing these laws.

12 At the request of an applicant for a drivers license, a license issued to the applicant
13 must contain the applicant's race."

14 **SECTION 2.** G.S. 20-7(f)(1) reads as rewritten:

15 "(1) Duration of license for persons under age 18-21. – A full provisional
16 drivers license issued to a person under the age of 18-21 expires on the
17 person's twenty-first birthday."

18 **SECTION 3.** G.S. 20-7(f)(2) reads as rewritten:

19 "(2) Duration of original license for persons at least 18-21 years of age or
20 older. – A drivers license issued to a person at least 18-21 years old but
21 less than 54 years old expires on the birthday of the licensee in the
22 eighth year after issuance. A drivers license issued to a person at least
23 54 years old expires on the birthday of the licensee in the fifth year
24 after issuance. A commercial drivers license that has a vehicles
25 carrying passengers (P) and school bus (S) endorsement issued
26 pursuant to G.S. 20-37.16 shall expire on the birth date of the licensee
27 three years after the date of issuance, if the licensee is certified to drive
28 a school bus in North Carolina."

29 **SECTION 4.** G.S. 20-7(f)(3) reads as rewritten:

30 "(2a) Duration of renewed licenses. – A renewed drivers license that was
31 issued by the Division to a person at least 18-21 years old but less than
32 54 years old expires eight years after the expiration date of the license
33 that is renewed. A renewed drivers license that was issued by the
34 Division to a person at least 54 years old expires five years after the
35 expiration date of the license that is renewed."

36 **SECTION 5.** The Office of State Controller, with the support of the Office
37 of State Budget, shall identify and make all efforts to secure any matching funds or
38 other resources to assist in funding this initiative.

39 **SECTION 6.** This act becomes effective October 1, 2008, and applies to
40 drivers licenses and special identification cards issued or renewed on or after that date.



HOUSE BILL 2487: Change Format of Drivers Licenses/Under 21

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 1, 2008
Introduced by:	Reps. Folwell, Pierce, McElraft, Faison	Summary by:	Wendy Graf Ray
Version:	PCS to Third Edition H2487-CSSU-86[v.1]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 2487 would require the Division of Motor Vehicles to issue drivers licenses and special identification cards in a vertical format, instead of the current horizontal format, to persons under the age of 21 in order to make them more easily identifiable.*

[As introduced, this bill was identical to S1891, as introduced by Sen. Bingham, which is currently in House Transportation.]

CURRENT LAW: Under G.S. 20-7(n), the format of a drivers license for a person under the age of 21 is the same as for a person 21 or older, except that it is to be distinguished by a different color background or border, as determined by the Division of Motor Vehicles. Under G.S. 20-37.7(c), the format of a special identification card issued to an applicant is to be similar in size, shape, and design to a drivers license, and it must have the same background color that a drivers license issued to the applicant would have. Drivers licenses and special identification cards are currently issued by the Division in a horizontal format.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 2487 would require the Division to issue drivers licenses and special identification cards in a horizontal format for applicants 21 years of age and older, and in a vertical format for applicants under the age of 21. The stated intent would be to make it easier for those selling products that are sale restricted by age, and law enforcement officers, to identify underage persons.

EFFECTIVE DATE: The PCS would become effective October 1, 2008, and would apply to drivers licenses and special identification cards issued or renewed on or after that date.

BACKGROUND: This bill is a recommendation of the Child Fatality Task Force.

H2487e3-SMSU-CSSU-86v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2487*

Committee Substitute Favorable 6/5/08

Third Edition Engrossed 6/19/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2487-CSSU-86 [v.1]

6/30/2008 7:13:15 PM

Short Title: Change Format of Drivers Licenses/Under 21.

(Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

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- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

1 The Commissioner may waive the requirement of a color photograph on a license if
2 the license holder proves to the satisfaction of the Commissioner that taking the
3 photograph would violate the license holder's religious convictions. In taking
4 photographs of license holders, the Division must distinguish between license holders
5 who are less than 21 years old and license holders who are at least 21 years old by using
6 different color backgrounds or borders for each group. The Division shall determine the
7 different colors to be used. The Commissioner shall ensure that applicants 21 years old
8 or older are issued drivers licenses and special identification cards that are printed in a
9 horizontal format. The Commissioner shall ensure that applicants under the age of 21
10 are issued drivers licenses and special identification cards that are printed in a vertical
11 format, that distinguishes them from the horizontal format, for ease of identification of
12 individuals under age 21 by members of industries that regulate controlled products that
13 are sale restricted by age and law enforcement officers enforcing these laws.

14 At the request of an applicant for a drivers license, a license issued to the applicant
15 must contain the applicant's race."

16 **SECTION 2.** The Office of State Controller, with the support of the Office
17 of State Budget, shall identify and make all efforts to secure any matching funds or
18 other resources to assist in funding this initiative.

19 **SECTION 3.** This act becomes effective October 1, 2008, and applies to
20 drivers licenses and special identification cards issued or renewed on or after that date.

**Supporters and Interested Parties of
H.B. 2487/S.B. 1891: Change Format of Drivers Licenses/Under 21
Representatives Folwell, Pierce, McElraft & Faison**

Letters of Endorsement:

NC Division of Motor Vehicles.....Commissioner William C. Gore Jr.

NC Crime Control and Public Safety.....Secretary Bryan E. Beatty

Governor's Highway Safety Program.....Director Darrell Jernigan

NC Retail Merchants Association.....Mr. Andy Ellen

NC Petroleum & Convenience Marketers.....Mr. Gary Harris

NC Beer & Wine Wholesalers Association.....Mr. Dean Plunkett

Supporters who recommend vertical licenses for drivers under 21:

NC Child Fatality Task Force.....Ms. Selena Childs

NC Alcohol Law Enforcement.....Dr. William C. Chandler

NC Association of Chiefs of Police and Campus Police

NC Department of Insurance

NC Association of ABC Boards

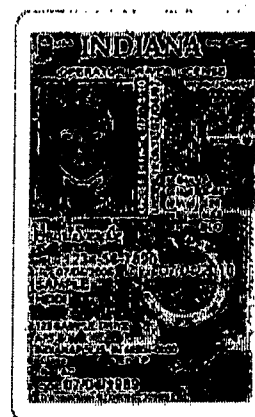
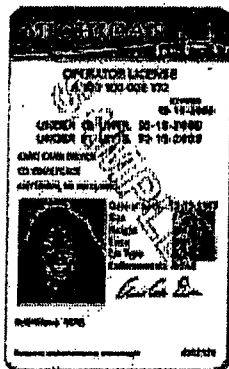
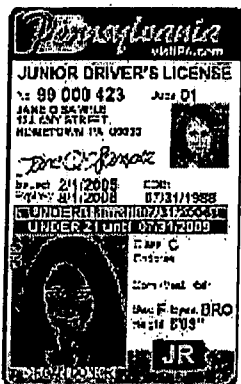
NC Pediatric Society

Safe Kids North Carolina

10. Issue vertical driver's licenses to youth under age 21, that clearly indicate when the youth turns both 18 and 21 years of age, to increase the prevention of underage drinking by helping clerks easily identify youth who are attempting to purchase alcohol illegally.

- For children ages 1 to 17, motor vehicle crashes remain the leading cause of death. Many of these deaths are related to alcohol.
- According to Alcohol Law Enforcement (ALE) data:
 - Just under 20% of alcohol vendors sell to minors, but 58% of those who do sell to minors do so after checking the valid identification, which indicates there is a problem with those vendors accurately reading the IDs.
 - There are about 50,000 alcohol vendors in the state, and there is almost 100% turnover of those vendors each year. Thus effective education of these vendors is difficult to attain.
- In addition to the vertical orientation, the new licenses would clearly identify the date that the individual turns 18 and 21 years of age so alcohol/tobacco vendors will not have to do any calculations based on the individual's birth date.
- 21 states use a "vertical driver's license" to help clerks easily identify minors who are attempting to purchase alcohol. (Alabama, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Nebraska, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Virginia, Washington, and Wisconsin).
- According to the Division of Motor Vehicles, it would cost North Carolina approximately \$50,000 to make the computer system change needed to issue vertical driver's licenses, which will be issued to newly licensed minors after the law becomes effective.
- Supported by NC Safe Kids, NC Department of Insurance, Division of Alcohol Law Enforcement, the Division of Motor Vehicles, and the NC Pediatric Society.

Examples of vertical licenses from other states:





HOUSE BILL 2487: Change Format of Drivers Licenses/Under 21

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 1, 2008
Introduced by:	Reps. Folwell, Pierce, McElraft, Faison	Summary by:	Wendy Graf Ray
Version:	PCS to Third Edition H2487-CSSU-86[v.1]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 2487 would require the Division of Motor Vehicles to issue drivers licenses and special identification cards in a vertical format, instead of the current horizontal format, to persons under the age of 21 in order to make them more easily identifiable.*

[As introduced, this bill was identical to S1891, as introduced by Sen. Bingham, which is currently in House Transportation.]

CURRENT LAW: Under G.S. 20-7(n), the format of a drivers license for a person under the age of 21 is the same as for a person 21 or older, except that it is to be distinguished by a different color background or border, as determined by the Division of Motor Vehicles. Under G.S. 20-37.7(c), the format of a special identification card issued to an applicant is to be similar in size, shape, and design to a drivers license, and it must have the same background color that a drivers license issued to the applicant would have. Drivers licenses and special identification cards are currently issued by the Division in a horizontal format.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 2487 would require the Division to issue drivers licenses and special identification cards in a horizontal format for applicants 21 years of age and older, and in a vertical format for applicants under the age of 21. The stated intent would be to make it easier for those selling products that are sale restricted by age, and law enforcement officers, to identify underage persons.

EFFECTIVE DATE: The PCS would become effective October 1, 2008, and would apply to drivers licenses and special identification cards issued or renewed on or after that date.

BACKGROUND: This bill is a recommendation of the Child Fatality Task Force.

H2487e3-SMSU-CSSU-86v1

*RC, I have no problem
with this bill being read. Sorry
Stan Bingham*

PUBLIC BILL

Proposed Committee Substitute For
H.B. 2463

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE LENDING ACT.

Introduced by Representative(s): Blue, Church and Carney (Primary Sponsors)

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

Committee on Judiciary D
majority being present, having considered
bill, recommend that it do ☒ pass.

Rep Blue
For the Committee

and be re-referred to the
Committee of Finance.

FAVORABLE TO COMM. SUB #2

UNFAVORABLE TO BILL #1
C.S. #1

JUN 18 2008

AND PLACED ON
CALENDAR FOR

ref to Finance

The Committee on Finance
a majority being present having considered
this bill, recommend that it do ☒ pass.
Reps. Luebke, Gieson, Wainwright and Weiss
For the Committee

REPORTED FAVORABLY JUN 24 2008

PURSUANT TO RULE 36(b)

JUN 24 2008

PLACED ON CALENDAR
OF 6-25-08

PASSED 2nd READING

Ayes 116 Noes 0

JUN 25 2008

AND PLACED ON THE
CALENDAR

PASSED 3rd READING

Ayes 113 Noes 0

JUN 26 2008

AND ORDERED SENT
TO SENATE

Special Message

Denise Weeks

RECEIVED

JUN 26 2008

From House of Representatives
By Clerk AP 7:14 AM PM

PASSED 1st READING

JUN 26 2008

AND REFERRED TO COMMITTEE
ON Commerce, Small

Bus & Entrepreneurship

SEQUENTIAL REFERRAL:

Finance

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 2463
Committee Substitute Favorable 6/11/08
Committee Substitute #2 Favorable 6/18/08

Short Title: Regulate Mortgage Servicers.

(Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE
SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO
MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE
LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"§ 53-243.01. Definitions.

The following definitions apply in this Article:

- (1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.
- (2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.
- (3) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage loan, the mortgage servicing loan documents, or servicing contract.

1 (2a)(4) Affiliate. – Any company that controls, is controlled by, or is under
2 common control with another company, as set forth in the Bank
3 Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as
4 amended from time to time. For purposes of this subdivision, the term
5 control means ownership of all of the voting stock or comparable
6 voting interest of the controlled person.

7 (2b)(5) Affiliated mortgage banker. – A licensed mortgage banker that meets
8 the criteria of either sub-subdivisions a., b., and c. of this subdivision
9 or sub-subdivisions d. and e. of this subdivision:

10 a. The licensee, by itself or with its affiliates, is licensed in five or
11 more states to engage in the mortgage lending business and (i)
12 is supervised by a state or federal regulatory agency whose
13 regulatory scheme has been determined by the Commissioner to
14 be substantially similar to that of North Carolina, (ii) is
15 organized and supervised under the laws of a state that has
16 adopted a model licensing law endorsed by the Commissioner;
17 or (iii) is supervised by a state or federal agency that is a party
18 to an interstate compact, or has otherwise entered into a
19 cooperative reciprocal agreement by which the state or federal
20 regulatory agency and the State of North Carolina, directly or
21 by duly authorized act of the Commissioner, have mutually
22 agreed to recognize state licensing laws which have specific
23 enumerated criteria.

24 b. The licensee, including its affiliates and wholly owned
25 subsidiaries, has more than 100 employees that are licensed
26 pursuant to this Article.

27 c. The licensee has a consolidated net worth of one hundred
28 million dollars (\$100,000,000) or more, or if the licensee does
29 not have the required net worth, its parent shall provide to the
30 Commissioner (i) evidence satisfactory to the Commissioner
31 that the parent has a net worth of one hundred million dollars
32 (\$100,000,000) or more, and (ii) an unconditional guarantee or
33 comparable instrument of surety satisfactory to the
34 Commissioner of the performance of the licensee of its
35 obligations under this Article.

36 d. The licensee is a direct or indirect wholly owned subsidiary of a
37 bank holding company or financial services holding company
38 subject to regulation by the Federal Reserve Board or the Office
39 of Thrift Supervision.

40 e. The licensee has a net worth of one hundred million dollars
41 (\$100,000,000) or, if the licensee does not have the required net
42 worth, (i) its parent, if it is not a bank holding company or
43 financial holding company, meets the requirements of
44 sub-subdivision c. of this subdivision or (ii) its parent, if such

parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars (\$10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3)(6) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4)(7) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office. A branch office shall not be located at an individual's home or residence.

(5)(8) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6)(9) Control. – ~~Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust. The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a Limited Liability Company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.~~

(7)(10) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker or mortgage servicer and is treated as ~~an~~ a common law employee for purposes of compliance with the federal income tax laws ~~laws~~ and whose income is reported on IRS Form W-2.

(7a)(11) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8)(12) Exempt person. – The term includes any of the following:

- a. Any agency of the federal government or any state or municipal government granting or servicing mortgage loans under specific authority of the laws of any state or the United States.

- 1 b. Any employee of a licensee whose responsibilities are limited
2 to clerical and administrative tasks for his or her employer and
3 who does not solicit borrowers, accept applications, or negotiate
4 the terms of loans on behalf of the employer.
- 5 c. Any person authorized to engage in business as a bank or a
6 wholly owned subsidiary of a bank, a farm credit system,
7 savings institution, or a wholly owned subsidiary of a savings
8 institution, or credit union or a wholly owned subsidiary of a
9 credit union, under the laws of the United States, this State, or
10 any other state. Except for G.S. 53-243.11 and G.S. 53-243.15,
11 this Article does not apply to the exempt persons set forth in
12 this ~~sub-subdivision (8)~~ sub-subdivision.
- 13 d. Any licensed real estate agent or broker who is performing
14 those activities subject to the regulation of the North Carolina
15 Real Estate Commission. Notwithstanding the above, an exempt
16 person does not include a real estate agent or broker who
17 receives compensation of any kind in connection with the
18 referral, placement, or origination of a mortgage loan.
- 19 e. Any officer or employee of an exempt person described in
20 sub-subdivision c. of this subdivision when acting in the scope
21 of employment for the exempt person.
- 22 f. Any person who, acting as seller, seller and lender and servicer
23 in a residential real estate transaction, receives and services in
24 one calendar year no more than five purchase money notes
25 secured by mortgages, deeds of trust, or other security
26 instruments on the real estate sold as security for a the purchase
27 money obligation.
- 28 g. The North Carolina Housing Finance Agency as established by
29 Article 122A of the General Statutes and the North Carolina
30 Agricultural Finance Authority as established by Article 122D
31 of the General Statutes.
- 32 h. Any nonprofit corporation qualifying under section 501(c)(3) of
33 the Internal Revenue Code which makes or services mortgage
34 loans to promote home ownership or home improvements for
35 the disadvantaged, provided that such corporation is not
36 primarily in the business of soliciting or brokering or servicing
37 mortgage loans.
- 38 i. Any life insurance companies licensed to do business in North
39 Carolina with regard to provisions concerning mortgage
40 lenders.
- 41 j. A North Carolina licensed attorney who, in the practice of law
42 or in performing as a trustee, accepts payments related to a loan
43 closing, default, foreclosure, loss mitigation, or litigation or
44 settlement of a dispute or legal claim related to a loan.

- 1 k. A mortgage banker licensed under this Article and any
2 employee of a mortgage banker licensed under this Article are
3 exempt from the requirement to obtain a separate license as a
4 mortgage servicer, provided, however, that all provisions of this
5 Article applicable to mortgage servicers are applicable to any
6 mortgage banker or any employee of a mortgage banker acting
7 as a mortgage servicer, including filing a claim of exemption
8 under G.S. 53-243.15.
- 9 (9)(13) Licensee. – A loan officer, limited loan officer, mortgage broker, or
10 ~~mortgage banker~~ mortgage banker, or mortgage servicer who is
11 licensed pursuant to this Article.
- 12 (10)(14) Loan officer. – An individual who, in exchange for compensation as an
13 employee of another person, accepts or offers to accept applications
14 for mortgage ~~loans~~ loans, or who solicits or offers to solicit a mortgage
15 loan, negotiates the terms or conditions of a mortgage loan, issues
16 mortgage loan commitments or interest rate guarantee agreements to
17 borrowers, whether such acts are done through contact by telephone,
18 by electronic means, by mail, or in person with the borrowers or
19 potential borrowers. The definition of loan officer shall not include any
20 exempt person described in sub-subdivision (8)b.(12)b. of this section.
- 21 (10a)(15) Limited loan officer. – An individual who, in exchange for
22 compensation as an employee of an affiliated mortgage banker,
23 directly solicits, negotiates, offers, or makes commitments for
24 mortgage loans. The definition of limited loan officer shall not include
25 any exempt person described in sub-subdivision (8)b.(12)b. of this
26 section.
- 27 (11)(16) Make a mortgage loan. – To close a mortgage loan, to advance funds,
28 to offer to advance funds, or to make a commitment to advance funds
29 to a borrower under a mortgage loan.
- 30 (12) ~~Managing principal. – A person who meets the requirements of~~
31 ~~G.S. 53-243.05(c) and who agrees to be primarily responsible for the~~
32 ~~operations of a licensed mortgage broker or mortgage banker.~~
- 33 (13)(17) Mortgage banker. – A person who acts as a mortgage lender as that
34 term is defined in subdivision (2) of this section. However, the
35 definition does not include a person who acts as a mortgage lender
36 only in tablefunding transactions.
- 37 (14)(18) Mortgage broker. – A person who acts as a mortgage broker as that
38 term is defined in subdivision (1) of this section. The term "mortgage
39 broker" includes an exclusive mortgage broker, except when expressly
40 provided otherwise.
- 41 (15)(19) Mortgage loan. – A loan made to a natural person or persons primarily
42 for personal, family, or household use, primarily secured by either a
43 mortgage or a deed of trust on residential real property located in
44 North Carolina.

- (20) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (3) of this section or who otherwise meets the definition of 'servicer' in RESPA, 12 U.S.C. § 2605(i), with respect to mortgage loans.
- (15a)(21) Parent. – The person that controls an affiliated mortgage ~~banker, banker,~~ mortgage broker, or mortgage servicer, as control is defined in subdivision (2a)(4) of this section.
- (16)(22) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.
- (17)(23) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.
- (18)(24) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.
- (25) Qualified servicer. – A person who is engaged in the business of acting as a mortgage servicer in North Carolina and who has been approved by the United States Department of Housing and Urban Development to service FHA loans or has been approved as a servicer by either the Federal National Mortgage Association or by the Federal Home Loan Mortgage Corporation.
- (26) Qualifying individual. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker or mortgage servicer.
- (19)(27) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.
- (28) RESPA. – The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., as it may be hereafter amended.
- (20)(29) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"§ 53-243.02. License required; licensee records.

(a) Other than an exempt person, it is unlawful for any person in this State to act as a mortgage ~~broker or broker,~~ mortgage banker, or mortgage servicer, or directly or indirectly to engage in the business of a mortgage ~~broker or abroker,~~ mortgage ~~banker, banker,~~ or mortgage servicer, without first obtaining a license from the

Commissioner under the provisions of this Article. This Article shall apply to any person who seeks to avoid its application by any direct or indirect device, subterfuge, artifice, or pretense whatsoever.

...

(e) No person, other than an exempt person, shall hold himself or herself out as a mortgage banker, an affiliated mortgage banker, a mortgage broker, a mortgage servicer, a limited loan officer, or a loan officer unless such person is licensed in accordance with this Article.

(f) Any person who has completed and filed with the Commissioner the application and all documents required for licensure as a loan officer other than documents relating to the required examination and the mortgage lending fundamentals course may act as a loan officer during the period before action is taken on the application by the Commissioner, if:

- (1) The Commissioner has not denied, revoked, or taken any adverse action with respect to an application filed by or license held by such person during the five-year period ending on the date of filing of the application;
- (2) The loan officer is employed by a licensed mortgage broker or mortgage banker, and the ~~managing principal~~qualifying individual of such mortgage broker or mortgage banker (i) certifies to the Commissioner in writing that the ~~managing principal~~qualifying individual reasonably believes that the application of the person for licensure as a loan officer meets or exceeds all of the relevant requirements of this Article for licensure and (ii) undertakes in writing that the ~~managing principal~~qualifying individual and the employer will be responsible for the acts of the applicant during the period that such application is pending; and
- (3) The person is currently or has within the six-month period prior to the date of the application been employed as and acting as a loan officer for an exempt entity which entity is exempt by virtue of an exemption claimed under G.S. 53-243.01(8)~~e~~.53-243.01(12)c.

(g) The Commissioner may deny or suspend the rights of a mortgage broker or mortgage banker to employ a loan officer acting under subsection (f) of this section if the Commissioner finds that the mortgage broker or mortgage banker, or the ~~managing principal~~qualifying individual thereof, makes the certification or undertaking set forth in subdivision (2) of subsection (f) of this section not in good faith."

SECTION 3. G.S. 53-243.05 reads as rewritten:

"§ 53-243.05. Qualifications for licensure; issuance.

(a) Any person, other than an exempt person, desiring to obtain a license pursuant to this Article shall make written application for licensure to the Commissioner on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

- 1 (1) The applicant's name and address (including street address, mailing
2 address, e-mail, and telephone contact information) and social security
3 number-number or taxpayer identification number.
- 4 (2) The applicant's form and place of organization, if applicable.
- 5 (3) The applicant's proposed method of and locations for doing business,
6 if applicable.
- 7 (4) The qualifications and business history of the applicant and, if
8 applicable, the business history of any partner, officer, or director, any
9 person occupying a similar status or performing similar functions, or
10 any person directly or indirectly controlling the applicant, including:
11 (i) a description of any injunction or administrative order by any state
12 or federal authority to which the person is or has been subject; (ii) a
13 ~~conviction~~ conviction, within the past 10 years, of a misdemeanor
14 involving fraudulent dealings or moral turpitude or relating to any
15 aspect of the residential mortgage lending businessany fraud, false
16 statement or omission, any theft or wrongful taking of property,
17 bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to
18 commit any of these offenses; or involving any financial service or
19 financial service-related business; (iii) any felony convictions.
- 20 (5) With respect to an application for licensing as a mortgage ~~banker or~~
21 ~~broker, banker, mortgage broker, or mortgage servicer,~~ the applicant's
22 financial condition, credit history, and business history; and with
23 respect to the application for licensing as a loan officer, the applicant's
24 credit history and business history.
- 25 (6) The applicant's consent to a federal and State criminal history record
26 check and a set of the applicant's fingerprints in a form acceptable to
27 the Commissioner. In the case of an applicant that is a corporation,
28 partnership, limited liability company, association, or trust, each
29 individual who has control of the applicant or who is the ~~managing~~
30 ~~principal~~ qualifying individual or a branch manager shall consent to a
31 federal and State criminal history record check and submit a set of that
32 individual's fingerprints pursuant to this subdivision. Refusal to
33 consent to a criminal history record check constitutes grounds for the
34 Commissioner to deny licensure to the applicant as well as to any
35 entity (i) by whom or by which the applicant is employed, (ii) over
36 which the applicant has control, or (iii) as to which the applicant is the
37 current or proposed ~~managing principal~~ qualifying individual or a
38 current or proposed branch manager.
- 39 (b) In addition to the requirements imposed by the Commissioner under
40 subsection (a) of this section, each individual applicant for licensure as a loan officer
41 shall:
 - 42 (1) Be at least 18 years of age.
 - 43 (2) Have satisfactorily completed, within the three years immediately
44 preceding the date application is made, a mortgage lending

1 fundamentals course approved by the Commissioner. The course shall
2 consist of at least eight hours of classroom instruction in subjects
3 related to mortgage lending approved by the Commissioner. In
4 addition, the applicant shall have satisfactorily completed a written
5 examination approved by the Commissioner or possess residential
6 mortgage lending education or experience in residential mortgage
7 lending transactions that the Commissioner deems equivalent to the
8 course.

9 (c) In addition to the requirements under subsection (a) of this section, each
10 applicant for licensure as a mortgage broker or mortgage banker or mortgage servicer at
11 the time of application and at all times thereafter shall comply with the following
12 requirements:

13 (1) Except as provided for in subdivision (1a) of this subsection, if the
14 applicant is a sole proprietor, the applicant shall have at least three
15 years of experience in residential mortgage lending or other experience
16 or competency requirements as the Commissioner may impose.
17 Experience as an exclusive mortgage broker or as a limited loan officer
18 shall not constitute mortgage-lending experience under this
19 subdivision.

20 (1a) If an individual applicant to be licensed as a mortgage broker meets all
21 other requirements for licensure under this section but does not meet
22 the requirements of subdivision (1) of this subsection, the individual
23 applicant may be licensed as an exclusive mortgage broker upon
24 compliance with all of the following:

- 25 a. Successfully complete both a residential mortgage-lending
26 course approved by the Commissioner of not less than 40 hours
27 of classroom instruction, and a written examination approved
28 by the Commissioner.
- 29 b. Act exclusively as a mortgage broker for a single mortgage
30 banker licensee or single exempt mortgage banker for whom the
31 broker shall be deemed an agent, who shall be responsible for
32 supervising the broker as required by this Article, who shall
33 sign the license application of the applicant, and who shall be
34 jointly and severally liable with the broker for any claims
35 arising out of the broker's mortgage lending activities.
- 36 c. Shall be compensated for the broker's mortgage brokering
37 activities on a basis that is not dependent upon the loan amount,
38 interest rate, fees, or other terms of the loans brokered.
- 39 d. Shall not handle borrower or other third-party funds in
40 connection with the brokering or closing of mortgage loans.

41 (2) If the applicant is a general or limited partnership, at least one of its
42 general partners shall have the experience as described under
43 subdivision (1) of this subsection.

(3) If the applicant is a corporation, at least one of its principal officers shall have the experience as described under subdivision (1) of this subsection.

(4) If the applicant is a limited liability company, at least one of its managers shall have the experience as described under subdivision (1) of this subsection.

(d) Each applicant shall identify one person meeting the requirements of subsection (c) of this section to serve as the applicant's ~~managing principal~~ qualifying individual.

(e) Every applicant for initial licensure shall pay a filing fee not to exceed one thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or broker,~~ mortgage ~~banker-banker,~~ or mortgage servicer or sixty-seven dollars and fifty cents (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual cost of obtaining credit reports and State and national criminal history record checks.

(f) A mortgage banker or mortgage servicer shall post a surety bond in the amount of one hundred fifty thousand dollars (\$150,000), and a mortgage broker shall post a surety bond in the amount of fifty thousand dollars (\$50,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee under this Article. The aggregate liability of the surety shall not exceed the principal sum of the bond. A party having a claim against the licensee may bring suit directly on the surety bond, or the Commissioner may bring suit on behalf of any claimants, either in one action or in successive actions. Consumer claims shall be given priority in recovering from the bond. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond that is required. An audited financial statement from a qualified lender or qualified servicer showing a net worth of two hundred fifty thousand dollars (\$250,000) or more shall be accepted in lieu of any bond required.

(g) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall, upon payment of the applicable fee, meet the qualifications for licensure as a loan officer subject to the provisions of subsection (i) of this section.

(h) Each principal office and each branch office of a mortgage broker or mortgage banker licensed under the provisions of this Article shall be issued a separate license. A licensed mortgage broker or mortgage banker shall file with the Commissioner an application on a form prescribed by the Commissioner that identifies the address of the principal office and each branch office and branch manager. A filing fee not to exceed one hundred twenty-five dollars (\$125.00) shall be assessed by the Commissioner for each branch office issued a license.

(i) If the Commissioner determines that an applicant meets the qualifications for licensure and finds that the financial responsibility, character, and general fitness of the applicant are such as to command the confidence of the community and to warrant belief that the business will be operated honestly and fairly, the Commissioner shall issue a license to the applicant. In addition, for an applicant qualifying as an exclusive

1 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage
2 banker relationship is in the public interest."

3 **SECTION 4. G.S. 53-243.06 reads as rewritten:**

4 **"§ 53-243.06. License renewal; termination.**

5 (a) All licenses issued by the Commissioner under the provisions of this Article
6 shall expire annually on the ~~30th day of June~~ 31st day of December following issuance
7 or on any other date that the Commissioner may determine. The license shall become
8 invalid after that date unless renewed. A license may be renewed ~~45 days prior to the~~
9 ~~expiration date on or after November 1~~ by compliance with subsection (b1) of this
10 section and by paying to the Commissioner, in addition to the actual cost of obtaining
11 credit reports and State and national criminal history record checks and of processing
12 fees of the nationwide system as the Commissioner may require, a renewal fee as
13 follows:

- 14 (1) Licensed mortgage bankers and licensed mortgage servicers shall pay
15 an annual fee not to exceed six hundred twenty-five dollars (\$625.00)
16 and one hundred twenty-five dollars (\$125.00) for each branch office.
17 (2) Licensed mortgage brokers shall pay an annual fee not to exceed six
18 hundred twenty-five dollars (\$625.00) and one hundred twenty-five
19 dollars (\$125.00) for each branch office. Licensed exclusive mortgage
20 brokers shall pay an annual fee not to exceed six hundred twenty-five
21 dollars (\$625.00).
22 (3) Licensed loan officers shall pay an annual fee not to exceed
23 sixty-seven dollars and fifty cents (\$67.50).

24 (b) If a mortgage ~~banker~~ banker, mortgage servicer, or mortgage broker license is
25 not renewed prior to the applicable expiration date, then ~~an additional two hundred fifty~~
26 ~~dollars (\$250.00)~~ in addition to the renewal fee under subsection (a) of this section shall
27 be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is
28 not renewed prior to the applicable expiration date, then ~~an additional fifty one hundred~~
29 ~~dollars (\$50.00)~~ \$100.00 in addition to the renewal fee under subsection (a) of this
30 section shall be assessed as a late fee to any renewal. In the event a licensee fails to
31 obtain a reinstatement of the license ~~within 90 days after the date the license expires,~~
32 prior to March 1, the Commissioner may require the licensee to comply with the
33 requirements for the initial issuance of a license under the provisions of this Article.

34 (b1) When required by the Commissioner, each individual described in
35 G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal
36 history record check and a set of his or her fingerprints in a form acceptable to the
37 Commissioner. Refusal to consent to a criminal history record check may constitute
38 grounds for the Commissioner to deny renewal of the license of the person as well as
39 the license of any other person by which he or she is employed, over which he or she
40 has control, or as to which he or she is the current or proposed ~~managing~~
41 principal qualifying individual or a current or proposed branch manager.

42 (c) Licenses issued under this Article are not assignable. Control of a licensee
43 shall not be acquired through a stock purchase or other device without the prior written
44 consent of the Commissioner. The Commissioner shall not give written consent if the

Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

SECTION 5. G.S. 53-243.08 reads as rewritten:

"§ 53-243.08. ~~Managing principals~~Qualifying individuals and branch managers.

Each mortgage broker or mortgage banker or mortgage servicer licensed under this Article shall have a ~~managing principal~~qualifying individual who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, shall have a branch manager who meets the experience requirements under G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer, or in a comparable position in another state. The ~~managing principal~~qualifying individual for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of ~~managing principal~~qualifying individual and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its ~~managing principal~~qualifying individual or branch manager designated for each branch. Each mortgage servicer licensed under this Article shall file a form prescribed by the Commissioner indicating the business's designation of its qualifying individual and shall notify the Commissioner of any change in its qualifying individual. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a ~~managing principal~~qualifying individual for the purposes of this Article."

SECTION 6. G.S. 53-243.09 reads as rewritten:

"§ 53-243.09. Offices; address changes; display of license.

(a) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. A principal place of business in this State shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions of others may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. However, the Commissioner may, by rule, impose terms and conditions under which the records and files may be maintained outside of this State. A principal place of business shall not be located at an individual's home or residence.

(b) A mortgage banker or mortgage broker or mortgage servicer licensee shall report any change of address of the principal place of business or any branch office within 15 days after the change.

(c) Each mortgage broker or mortgage banker licensed under this Article shall display in plain public view the certificate of licensure issued by the Commissioner in its principal office and in each branch office. Each loan officer licensed under this Article shall ~~display~~ display, in plain public view, in each branch office in which the officer acts as a loan officer the certificate of licensure issued by the Commissioner."

SECTION 7. G.S. 53-243.10 reads as rewritten:

"§ 53-243.10. Mortgage broker duties; mortgage servicer duties.

(a) A mortgage broker, including any mortgage broker licensee and any person ~~required to be licensed~~ acting as a mortgage broker under this Article, shall, in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) Make reasonable efforts to secure a loan that is reasonably advantageous to the borrower considering all the circumstances, including the rates, charges, and repayment terms of the loan.
- (5) Timely and clearly disclose to the borrower material information as specified by the Commission that may be expected to influence the borrower's decision and is reasonably accessible to the mortgage broker, including the total compensation the mortgage broker expects to receive from any and all sources in connection with each loan option presented to the borrower.
- (6) Notify before closing each lender of the particulars of each of the other lender's loans if the mortgage broker knows that more than one mortgage loan will be made by different lenders contemporaneously to a borrower secured by the same real property.
- (7) Ensure that any services offered to any applicant shall be available and offered to all similarly situated applicants on an equal basis.
- (8) In transactions where the broker has the ability to make credit decisions, use reasonable means to provide the borrower with prompt credit decisions on its loan applications and, where the credit is denied, to comply fully with the notification requirements of applicable state and federal law.
- (9) Ensure that ~~its~~ advertising materials are designed to make customers and potential customers aware that ~~one~~ the mortgage broker does not discriminate on any prohibited basis.

(b) A mortgage servicer licensed or acting under this Article, in addition to duties imposed by other statutes or at common law, shall do all of the following:

- (1) Safeguard and account for any money handled for the borrower.
- (2) Follow reasonable and lawful instructions from the borrower.
- (3) Act with reasonable skill, care, and diligence.
- (4) With its application and renewal and with its supplemental filings made from time to time, file with the Commissioner a complete,

- 1 current schedule of the ranges of costs and fees it charges borrowers
2 for its servicing-related activities.
- 3 (5) File with the Commissioner upon request a report in a form and format
4 acceptable to the Commissioner detailing the servicer's activities in
5 this State, including:
- 6 a. The number of mortgage loans the servicer is servicing.
7 b. The type and characteristics of such loans in this State.
8 c. The number of serviced loans in default, along with a
9 breakdown of 30-, 60-, and 90-day delinquencies.
10 d. Information on loss mitigation activities, including details on
11 workout arrangements undertaken.
12 e. Information on foreclosures commenced in this State.
- 13 (6) At the time a servicer accepts assignment of servicing rights for a
14 mortgage loan, the servicer shall disclose to the borrower all of the
15 following:
- 16 a. Any notice required by RESPA or by regulations promulgated
17 thereunder.
18 b. A schedule of the ranges and categories of its costs and fees for
19 its servicing-related activities, which shall comply with North
20 Carolina law and which shall not exceed those reported to the
21 Commissioner.
22 c. A notice in a form and content acceptable to the Commissioner
23 that the servicer is licensed by the Commissioner and that
24 complaints about the servicer may be submitted to the
25 Commissioner.
26 d. Any notice required by Article 2A, Article 4, or Article 10 of
27 Chapter 45 of the General Statutes.
- 28 (7) In the event of a delinquency or other act of default on the part of the
29 borrower, the servicer shall act in good faith to inform the borrower of
30 the facts concerning the loan and the nature and extent of the
31 delinquency or default, and, if the borrower replies, to negotiate with
32 the borrower, subject to the servicer's duties and obligations under the
33 mortgage servicing contract, if any, to attempt a resolution or workout
34 to the delinquency."

35 **SECTION 8.** G.S. 53-243.11 reads as rewritten:

36 **"§ 53-243.11. Prohibited activities.**

37 In addition to the activities prohibited under other provisions of this Article, it shall
38 be unlawful for any person in the course of any mortgage loan transaction:

- 39 (1) To misrepresent or conceal the material facts or make false promises
40 likely to influence, persuade, or induce an applicant for a mortgage
41 loan or a mortgagor to take a mortgage loan, or to pursue a course of
42 misrepresentation through agents or otherwise.
43 (2) To refuse improperly to issue a satisfaction of a mortgage.

- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, servicer, broker, or loan officer is not entitled to retain under the circumstances.
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.
- (5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of ~~Chapter 24~~ Chapter 24, Chapter 45, or Chapter 54 of the General Statutes.
- (6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.
- (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.
- (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.
- (9) To fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are:
 - a. Requested from the appraiser in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and
 - b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.
- (10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars (\$150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.
- (11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision shall be construed to prohibit a mortgage ~~broker or mortgage banker~~ broker, mortgage banker, or mortgage servicer from asking the appraiser to do one or more of the following:
 - a. Consider additional appropriate property information.

- 1 b. Provide further detail, substantiation, or explanation for the
2 appraiser's value conclusion.
- 3 c. Correct errors in the appraisal report.
- 4 (12) To fail to comply with the mortgage loan servicing transfer, escrow
5 account administration, or borrower inquiry response requirements
6 imposed by sections 6 and 10 of the Real Estate Settlement Procedures
7 Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted
8 thereunder by the Secretary of the Department of Housing and Urban
9 Development.
- 10 (13) To broker a rate spread adjustable rate mortgage loan without
11 disclosing to the borrower the terms and costs associated with a fixed
12 rate loan from the same lender at the lowest annual percentage rate for
13 which the borrower qualifies.
- 14 (14) To fail to comply with applicable federal laws and regulations related
15 to mortgage ~~lending~~, lending, or mortgage servicing.
- 16 (15) To engage in unfair, misleading, or deceptive advertising related to a
17 solicitation for a mortgage loan.
- 18 (16) For a mortgage servicer to fail to comply with the mortgage servicer's
19 obligations under Article 10 of Chapter 45 of the North Carolina
20 General Statutes.
- 21 (17) For a person acting as a mortgage servicer to fail to provide written
22 notice to a borrower upon taking action to place hazard, homeowner's,
23 or flood insurance on the mortgaged property or to place such
24 insurance when the person acting as a mortgage servicer knows or has
25 reason to know that such insurance is in effect.
- 26 (18) For a person acting as a mortgage servicer to place hazard,
27 homeowner's, or flood insurance on a mortgaged property for an
28 amount that exceeds either the value of the insurable improvements or
29 the last known coverage amount of insurance.
- 30 (19) For a person acting as a mortgage servicer to fail to provide to the
31 borrower a refund of unearned premiums paid by a borrower or
32 charged to the borrower for hazard, homeowner's, or flood insurance
33 placed by a lender if the borrower provides reasonable proof that the
34 borrower has obtained coverage such that the forced placement is no
35 longer necessary and the property is insured. If the borrower provides
36 reasonable proof within 12 months of the placement that no lapse in
37 coverage occurred such that the forced placement was not necessary,
38 the servicer shall refund the entire premium.
- 39 (20) For a person acting as a mortgage servicer to refuse to reinstate a
40 delinquent loan upon a tender of payment made timely under the
41 contract which is sufficient in amount, based upon the last written
42 statement received by borrower, to pay all past due amounts,
43 outstanding or overdue charges, and restore the loan to a

- 1 nondelinquent status, but this reinstatement shall be available to a
2 borrower no more than twice in any 24-month period.
- 3 (21) For a person acting as a mortgage servicer to fail to mail, at least 30
4 days before foreclosure is initiated, a notice addressed to the borrower
5 at the borrower's last known address with the following information:
- 6 a. An itemization of all past due amounts causing the loan to be in
7 default.
- 8 b. An itemization of any other charges that must be paid in order
9 to bring the loan current.
- 10 c. A statement that the borrower may have options available other
11 than foreclosure, and that the borrower may discuss such
12 options with the mortgage lender, the servicer, or a counselor
13 approved by the U.S. Department of Housing and Urban
14 Development.
- 15 d. The address, telephone number, and other contact information
16 for the mortgage lender, the servicer, or the agent for either of
17 them who is authorized to attempt to work with the borrower to
18 avoid foreclosure.
- 19 e. The name, address, telephone number, and other contact
20 information for three or more HUD-approved counseling
21 agencies operating to assist borrowers in North Carolina to
22 avoid foreclosure.
- 23 f. The address, telephone number, and other contact information
24 for the consumer complaint section of the Office of the
25 Commissioner of Banks.
- 26 (22) To fail to make all payments from any escrow account held for the
27 borrower for insurance, taxes, and other charges with respect to the
28 property in a timely manner so as to ensure that no late penalties are
29 assessed or other negative consequences result regardless of whether
30 the loan is delinquent unless there are not sufficient funds in the
31 account to cover the payments, and the servicer has a reasonable basis
32 to believe that recovery of the funds will not be possible."

33 **SECTION 9.** G.S. 53-243.12 reads as rewritten:

34 **"§ 53-243.12. Disciplinary authority.**

35 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
36 renew a license of a licensee or applicant under this Article or may restrict or limit the
37 activities relating to mortgage loans of any licensee or any person who owns an interest
38 in or participates in the business of a licensee, if the Commissioner finds both of the
39 following:

- 40 (1) That the order is in the public interest.
- 41 (2) That any of the following circumstances apply to the applicant,
42 licensee, or any partner, member, manager, officer, director, loan
43 officer, limited loan officer, ~~managing principal, qualifying individual,~~
44 or any person occupying a similar status or performing similar

functions or any person directly or indirectly controlling the applicant or licensee. The person:

- a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.
- b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.
- c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving ~~mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing,~~ or financial services or a financial services-related business or any fraud, false statements or omissions, theft or any wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
- d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.
- e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage ~~broker or mortgage banker,~~ broker, mortgage banker, or mortgage servicer.
- f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage ~~brokerage or mortgage banking~~ brokerage, mortgage banking, or mortgage-servicing industry denying or revoking that person's license as a mortgage ~~broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker,~~ broker, mortgage servicer, or mortgage banker.
- g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.
- h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker or mortgage servicer who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.
- i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial

1 order under this sub-subdivision, and the Commissioner shall
2 vacate the order when the deficiency has been corrected.

3 j. Has falsely certified attendance or completion of hours at an
4 approved mortgage lending continuing education course.

5 (b) The Commissioner may, by order, summarily postpone or suspend the license
6 of a licensee pending final determination of any proceeding under this section. Upon
7 entering the order, the Commissioner shall promptly notify the applicant or licensee that
8 the order has been entered and the reasons for the order. The Commissioner shall
9 calendar a hearing within 15 days after the Commissioner receives a written request for
10 a hearing. If a licensee does not request a hearing and the Commissioner does not
11 request a hearing, the order will remain in effect until it is modified or vacated by the
12 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of
13 and opportunity for hearing, the Commissioner may modify or vacate the order or
14 extend it until final determination.

15 (c) The Commissioner may, by order, impose a civil penalty upon a licensee or
16 any partner, officer, director, or other person occupying a similar status or performing
17 similar functions on behalf of a licensee for any violation of this Article. The civil
18 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article
19 by a mortgage ~~broker or mortgage banker~~ broker, mortgage banker, or mortgage
20 servicer. The Commissioner may impose a civil penalty of up to ten thousand dollars
21 (\$10,000) for each violation of this Article by a person other than a licensee or exempt
22 person.

23 (d) In addition to other powers under this Article, upon finding that any action of
24 a person is in violation of this Article, the Commissioner may order the person to cease
25 from the prohibited action. If the person subject to the order fails to appeal the order of
26 the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the
27 appeal is denied or dismissed, and the person continues to engage in the prohibited
28 action in violation of the Commissioner's order, the person shall be subject to a civil
29 penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the
30 Commissioner's order. The penalty provision of this section shall be in addition to and
31 not in lieu of any other provision of law applicable to a licensee for the licensee's failure
32 to comply with an order of the Commissioner.

33 (e) Unless otherwise provided, all actions and hearings under this Article shall be
34 governed by Chapter 150B of the General Statutes.

35 (f) When a licensee is accused of any act, omission, or misconduct that would
36 subject the licensee to disciplinary action, the licensee, with the consent and approval of
37 the Commissioner, may surrender the license and all the rights and privileges pertaining
38 to it for a period of time established by the Commissioner. A person who surrenders a
39 license shall not be eligible for or submit any application for licensure under this
40 Article.

41 (g) If the Commissioner has reasonable grounds to believe that a licensee or other
42 person has violated the provisions of this Article or that facts exist that would be the
43 basis for an order against a licensee or other person, the Commissioner may at any time,
44 either personally or by a person duly designated by the Commissioner, investigate or

1 examine the loans and business of the licensee and examine the books, accounts,
2 records, and files of any licensee or other person relating to the complaint or matter
3 under investigation. The Commissioner may require any licensee or other person to
4 submit a consent to a criminal history record check and a set of that person's fingerprints
5 in a form acceptable to the Commissioner in connection with any examination or
6 investigation. Refusal to submit the requested criminal history record check or a set of
7 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
8 investigation or examination shall be charged against the licensee.

9 (h) The Commissioner may issue subpoenas to require the attendance of and to
10 examine under oath all persons whose testimony the Commissioner deems relative to
11 the person's business.

12 (i) The Commissioner may from time to time, at the expense of the
13 ~~Commissioner's office, licensee,~~ conduct routine examinations of the books and records
14 of any licensee in order to determine the compliance with this Article and any rules
15 adopted pursuant to the authority of G.S. 53-243.04.

16 (j) In addition to the rights described under this section, the Commissioner may
17 require a licensee to pay to a borrower or other individual any amounts received by the
18 licensee or its employees in violation of Chapter 24 of the General ~~Statutes.~~ Statutes, or,
19 if a servicer, in excess of those allowed by law to servicers.

20 (k) If the Commissioner finds that the ~~managing principal, qualifying individual,~~
21 branch manager, or loan officer of a licensee had knowledge of or reasonably should
22 have had knowledge of, or participated in, any activity that results in the entry of an
23 order under this section suspending or withdrawing the license of a licensee, the
24 Commissioner may prohibit the branch manager, ~~managing principal, qualifying~~
25 individual, or loan officer from serving as a branch manager, ~~managing~~
26 principal, qualifying individual, or loan officer for any period of time the Commissioner
27 deems necessary.

28 (l) In addition to the authority to require criminal history background checks as
29 set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the
30 authority to require a criminal history background check at any other time as a condition
31 of continued licensure. Upon the request of the Commissioner, a licensee shall furnish
32 to the Commissioner the licensee's consent to a criminal history record check and a set
33 of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to
34 consent to a criminal history record check under this subsection may constitute grounds
35 for the Commissioner to suspend or revoke the license of the licensee.

36 (m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order,
37 prohibit licensees under this Article from engaging in acts and practices in connection
38 with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to
39 evade the laws of this State, or that are not in the best interest of the borrowing public.

40 (n) In the event the Commissioner shall have evidence that a material violation of
41 law has occurred in the origination or servicing of a loan then being foreclosed or then
42 delinquent and in threat of foreclosure, and that the putative violation would be
43 sufficient in law or equity to base a claim or affirmative defense which would affect the
44 validity or enforceability of the underlying contract or the right to foreclose, then the

Commissioner may notify the Clerk of Superior Court, and the Clerk shall suspend foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the event that the Commissioner notifies the Clerk, the Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the violation or provide information to the Commissioner to rebut the evidence of the suspected violation. If the violation is cured or the information satisfies the Commissioner that no material violation has occurred, the Commissioner shall notify the Clerk so that the foreclosure proceeding may be resumed.

(o) The Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this Article, postage prepaid and addressed to the last known address of the licensee on file with the Commissioner pursuant to G.S. 53-243.13(d).

(p) The Commissioner is authorized to take action, including suspension of the license, if the licensee fails to respond within 20 days, or within a lesser time if specifically requested for good cause, to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee which allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business.

(q) The Commissioner is authorized to take action, including suspension of the license, if the licensee fails to respond within 20 days, or within a lesser time if specifically requested for good cause, to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article."

SECTION 10. G.S. 53-243.13(e) reads as rewritten:

"(e) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution. Individual loan applicants' or borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the common fund can be individually tracked and accounted for, and (ii) the common fund is kept separate from and is not commingled with the licensee's own funds."

SECTION 11. G.S. 53-243.14 reads as rewritten:

"§ 53-243.14. Criminal penalty.

A violation of G.S. 53-243.02 is a Class I felony. Each transaction involving the unlawful making or brokering or servicing of a mortgage loan is a separate offense."

SECTION 12. G.S. 53-243.15 reads as rewritten:

"§ 53-243.15. Filing required for exempt persons; civil penalty.

(a) All exempt persons described in G.S. 53-243.01(8) 53-243.01(12) who are engaged in the mortgage brokerage or mortgage banking business on October 1, 2002, or who are engaged in the mortgage-servicing business on October 1, 2008, shall be required to file a form with the Commissioner on or before that date. All exempt persons, who commence mortgage brokerage or mortgage banking business in this State

1 after October 1, 2002, or who commence mortgage servicing in this State after October
2 1, 2008, shall file the form with the Commissioner upon commencement of the
3 business. This form, prescribed by the Commissioner, shall contain all of the following
4 information:

- 5 (1) The name of the respective exempt person.
- 6 (2) The basis of the exempt status of the exempt person.
- 7 (3) The principal business address of the exempt person.
- 8 (4) The State or federal regulatory authority responsible for the exempt
9 person's supervision, examination, or regulation, if any.

10 (b) In addition to any other measures the exempt person may be subject to under
11 this Article, failure by an exempt person to file the required form shall not affect the
12 exempt status of the person. However, the exempt person shall be subject to a civil
13 penalty set by the Commissioner that shall not exceed the sum of two hundred fifty
14 dollars (\$250.00) for each year the form is not filed. No person required to file under
15 this section may transact business in this State as a mortgage banker or mortgage broker
16 or mortgage servicer unless the person has filed the prescribed form with the
17 Commissioner in accordance with this section."

18 **SECTION 13.** G.S. 53-243.16(b) reads as rewritten:

19 "(b) In addition, if a person described in subsection (a) of this section is a
20 corporation, partnership, limited liability company, association, or trust, the Department
21 of Justice may provide a criminal history record check to the Commissioner for any
22 person who has control of that person, or who is the ~~managing principal~~ qualifying
23 individual or a branch manager of that person."

24 **SECTION 14.** G.S. 53-243.17(c) reads as rewritten:

25 "(c) Notwithstanding any other provision of this section, the Commissioner retains
26 full authority and discretion under this Article to license mortgage brokers, mortgage
27 bankers, mortgage servicers, loan officers, and limited loan officers and to enforce this
28 Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or
29 derogation of that authority and discretion."

30 **SECTION 15.** G.S. 24-1.1E(a)(4a) reads as rewritten:

31 "(4a) 'Mortgage broker' is as defined in G.S. ~~53-243.01(14)~~ 53-243.01."

32 **SECTION 16.** G.S. 24-1.1F(a)(4) reads as rewritten:

33 "(4) Mortgage broker. – A mortgage broker as defined in
34 G.S. ~~53-243.01(14)~~ 53-243.01."

35 **SECTION 17.** G.S. 66-106(b) reads as rewritten:

36 "(b) Except for mortgage loans as defined in G.S. ~~53-243.01(15)~~ 53-243.01, this
37 Article shall not apply to any party approved as a mortgagee by the Secretary of
38 Housing and Urban Development, the Federal Housing Administration, the Veterans
39 Administration, a National Mortgage Association or any federal agency; nor to any
40 party currently designated and compensated by a North Carolina licensed insurance
41 company as its agent to service loans it makes in this State; nor to any insurance
42 company registered with and licensed by the North Carolina Insurance Commissioner;
43 nor, with respect to residential mortgage loans, to any residential mortgage banker or
44 mortgage broker licensed pursuant to Article 19A of Chapter 53 of the General Statutes

1 or exempt from licensure pursuant to G.S. ~~53-243.01(8)~~53-243.01(12) and
2 G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under
3 the North Carolina Securities Act, acting in the professional capacity for which such
4 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of
5 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not
6 apply to any lender whose loans or advances to any person, firm or corporation in North
7 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar
8 year."

9 **SECTION 18.** Chapter 45 of the General Statutes is amended by adding a
10 new section to read:

11 **"§ 45-21.16B. Suspension of foreclosure proceedings.**

12 (a) The Clerk of Superior Court shall suspend foreclosure proceedings, including
13 any hearing or order for sale, for 60 days if notified by the Commissioner of Banks as
14 provided in G.S. 53-243.12(n). During the suspension period, all deadlines under this
15 Article are tolled.

16 (b) When a clerk enters a suspension order pursuant to subsection (a) of this
17 section prior to a hearing required under G.S. 45-21.16, upon completion of the 60-day
18 suspension period, the trustee or mortgagee may proceed with the hearing by providing
19 written notice to all parties of the new hearing date, not less than 10 days prior to the
20 hearing date.

21 (c) When a clerk enters a suspension order pursuant to subsection (a) of this
22 section, after entry of any authorization by the clerk pursuant to G.S. 45-21.16 and
23 before the expiration of the 10-day upset bid period, the trustee or mortgagee shall not
24 be required to comply with the provisions of G.S. 45-21.16, but shall advertise and hold
25 the sale in accordance with G.S. 45-21.16A, 45-21.17, and 45-21.17A."

26 **SECTION 19.** G.S. 45-91 reads as rewritten:

27 **"§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments;**
28 **publication of statements.**

29 A servicer must comply as to every home loan, regardless of whether the loan is
30 considered in default or the borrower is in bankruptcy or the borrower has been in
31 bankruptcy, with the following requirements:

32 (1) Any fee that is incurred by a servicer shall be both:

33 a. Assessed within 45 days of the date on which the fee was
34 incurred. Provided, however, that attorney or trustee fees and
35 costs incurred as a result of a foreclosure action shall be
36 assessed within 45 days of the date they are charged by either
37 the attorney or trustee to the servicer.

38 b. Explained clearly and conspicuously in a statement mailed to
39 the borrower at the borrower's last known address at least 30
40 days after assessing the fee, provided the servicer shall not be
41 required to take any action in violation of the provisions of the
42 federal bankruptcy code.

43 (2) All amounts received by a servicer on a home loan at the address
44 where the borrower has been instructed to make payments shall be

accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(3) Failure to charge the fee or provide the information within the allowable time and in the manner required under subdivision (1) of subsection (a) of this section constitutes a waiver of such fee.

(4) All fees charged by a servicer must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law.

(5) The obligations of mortgage servicers set forth in G.S. 53-243.11."

SECTION 20. G.S. 45-94 reads as rewritten:

"§ 45-94. (Effective April 1, 2008) Remedies.

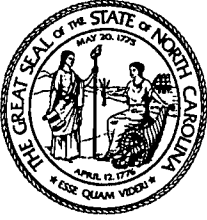
In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. The Clerk of Superior Court shall also suspend foreclosure proceedings for 60 days if notified by the Commissioner of Banks as provided in G.S. 53-243.12(n). With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

(1) The violation was not intentional or the result of bad faith; and

(2) Within 30 days after discovering or being notified of an error, and prior to the institution of any legal action by the borrower against the

1 servicer under this section, the servicer corrected the error and
2 compensated the borrower for any fees or charges incurred by the
3 borrower as a result of the violation."

4 **SECTION 21.** Sections 12 and 21 of this act become effective when it
5 becomes law. Subsection (n) of G.S. 53-243.12, as amended by Section 9, Section 18,
6 and Section 20 of this act, become effective January 1, 2009, and apply to foreclosure
7 proceedings filed on or after that date. The remainder of this act becomes effective
8 January 1, 2009, and applies to anyone engaged in the business of mortgage servicing
9 on or after that date.



HOUSE BILL 2463: Regulate Mortgage Servicers

BILL ANALYSIS

Committee: House Finance
Introduced by: Reps. Blue, Church, Carney
Version: Third Edition

Date: June 23, 2008
Summary by: Heather Fennell
Committee Counsel

SUMMARY: *House Bill 2463 amends the Mortgage Lending Act to include the licensure and regulation of mortgage servicers in a manner similar to that currently applied to mortgage brokers and mortgage bankers. The bill also imposes some specific duties on mortgage servicers and adds to the list of prohibited acts, certain acts specifically relating to mortgage servicers. The Commissioner of Banks is given authority to direct the Clerk of Superior Court to suspend a foreclosure proceeding for 60 days, if the Commissioner has evidence that there was a material violation of law in the origination or servicing of a loan. Mortgage servicers who fail to obtain a license would be guilty of a Class I felony.*

CURRENT LAW:

The Mortgage Lending Act, which was enacted in 2001, is a licensing and regulatory statute for the mortgage lending industry. Under the current law, mortgage bankers, mortgage brokers, and loan officers are required to be licensed by the Commissioner of Banks before engaging in the business of mortgage lending or mortgage brokering, unless exempt. The law exempts from licensing depository institutions (banks, wholly owned subsidiaries of banks, savings and loans, credit unions), life insurance companies, governmental lenders, nonprofits that make mortgage loans, persons that make no more than five loans a year, and real estate brokers who do not receive compensation for making loans.

The Commissioner of Banks has broad enforcement powers, including the power to revoke licenses and impose civil fines for violations of the law. Engaging in the mortgage banking or brokering business without a license is a Class I felony.

BILL ANALYSIS:

Section 1 of the bill adds several new definitions and amends others in the Mortgage Lending Act, including defining "act as a mortgage servicer" as one who engages in the business of receiving scheduled periodic payments from borrowers and making payments of principal and interest and other payments required by the loan or servicing contract. This section also adds licensed attorneys who hold funds in connection with a real estate transaction to the list of exempt persons under the act. Mortgage bankers and their employees are also exempt for obtaining a separate license when acting as a mortgage servicer.

Section 2 adds a requirement that mortgage servicers be licensed under the same conditions as mortgage brokers and mortgage bankers.

House Bill 2463

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Section 3 sets forth the qualifications of licensure. A mortgage servicer must have at least three years of experience in residential mortgage lending. Mortgage servicers must also pay an initial application fee of \$1,250 and post a bond in the amount of \$150,000 or show a net worth of \$250,000.

Section 4 changes the license renewal period from a fiscal year to a calendar year. All licenses will expire on December 31st; renewals begin on November 1, and mortgage servicers must pay a \$625 annual renewal fee and a \$250 late fee. This bill also increases the late fee for loan officers from \$50 to \$100.

Section 5 requires that each mortgage servicer designate a qualifying individual as the person who operates the business and must notify the Commissioner of any change in its qualifying individual.

Section 6 requires that mortgage servicers notify the Commissioner of any change of address of the principal place of business or any branch office within 15 days. It also clarifies that the principal place of business may not be in the home or residence of the mortgage broker, mortgage banker, or mortgage servicer.

Section 7 adds a new subsection which lists the duties of a mortgage servicer. These duties include filing a current schedule of the ranges of costs and fees with the Commissioner annually, filing reports detailing its servicing activities when requested by the Commissioner, disclosing certain required information to the borrower at the time the servicer accepts assignment for the loan, and working with the borrower to resolve any delinquency or default subject to the servicer's obligations under the servicing contract.

Section 8 expands the list of prohibited activities under the Act to include specific acts related to servicing. The list includes failing to comply with the Mortgage Debt Collection and Servicing Act under Article 10 of Chapter 45, failing to give a borrower notice when insurance is purchased or when the insurance exceeds the value of the improvements on the property, or to refund amounts when the purchase of insurance proves to be unnecessary. The list also includes a requirement that a servicer allow a borrower to reinstate a delinquent loan by tendering payment of all amounts due. However, this reinstatement is only available to a borrower twice in a 24 month period. Servicers must mail a notice containing specific information to the borrower at least 30 days before initiating a foreclosure proceeding. Servicers must also make timely payments from any escrow account held for the borrower.

Section 9 expands the disciplinary authority of the Commissioner to authorize the Commissioner to notify the Clerk of Superior Court when he finds evidence of a material violation of the law in connection with a loan that is being foreclosed or threatened with foreclosure. In this event, the Clerk must suspend the foreclosure proceeding for 60 days from the notice. The Commissioner must also notify the servicer and provide an opportunity to cure the violation or rebut the evidence.

House Bill 2463

Page 3

Section 10 adds a provision allowing licensees to aggregate applicant and borrower accounts in a common trust so long as interest is individually tracked and accounted for and the common funds are not commingled with the licensee's funds.

Section 11 adds servicers to the provision relating to criminal penalties. Failing to obtain a license is a Class I felony and each transaction is a separate offense.

Section 12 requires that anyone engaged in the servicing business on or after October 1, 2008, and claiming exemption under the Act must file with the Commissioner of Banks on or before that date.

Sections 13 – 17 make clarifying and conforming changes to existing law.

Section 18 adds a new section to Article 2A of Chapter 45 entitled "Suspension of foreclosure proceedings." This section corresponds to the provision added by section 9 of this bill, which authorizes the Commissioner of Banks to call for a 60-day suspension of foreclosure proceedings under certain circumstances. During the suspension period, all deadlines are tolled. After the completion of the suspension period, the trustee must give at least 10 days notice prior to a hearing, if no hearing has been held, or may proceed with the sale, if a hearing has been held and the Clerk has entered an order authorizing a sale.

Sections 19 – 20 make corresponding changes in the Mortgage Debt Collection and Servicing Act.

EFFECTIVE DATE: Sections 12 and 21 of this act becomes effective when it becomes law. Subsection (n) of G.S. 53-243.12 as amended by Section 9, Section 18, and Section 20 of this act becomes effective January 1, 2009, and apply to foreclosure proceedings filed on or after that date. The remainder of this act becomes effective January 1, 2009, and applies to anyone engaged in the business of mortgage servicing on or after that date.

BACKGROUND:

This bill was initially recommended by the House Select Committee on Rising Home Foreclosures which was chaired by Representatives Blue and Church.

Karen Cochrane-Brown substantially contributed to this summary

H2463e3-SMTD

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2443

DATE 7-1-08

S. B. No. _____

Amendment No. #1

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) NESBITT

Sen.)

1 moves to amend the bill on page 21, line 36

2 () WHICH CHANGES THE TITLE

3 by REWRITING THE LINE TO READ:

4 "A VIOLATION OF G.S. 53-243.02 IS A ~~CLASS I~~
5 ~~FELONY~~ CLASS 3 MISDEMEANOR, * EACH TRANSACTION
6 INVOLVING THE "

7 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Mark Nesbitt

ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2463

Committee Substitute Favorable 6/11/08

Committee Substitute #2 Favorable 6/18/08

PROPOSED COMMITTEE SUBSTITUTE H2463-PCS80629-TB-22

Short Title: Regulate Mortgage Servicers.

(Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO REGULATE MORTGAGE SERVICING; TO REQUIRE MORTGAGE
SERVICER LICENSURE UNDER THE MORTGAGE LENDING ACT; AND TO
MAKE TECHNICAL AND CLARIFYING CHANGES TO THE MORTGAGE
LENDING ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-243.01 reads as rewritten:

"§ 53-243.01. Definitions.

The following definitions apply in this Article:

- (1) Act as a mortgage broker. – To act, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, by accepting or offering to accept an application for a mortgage loan, soliciting or offering to solicit a mortgage loan, negotiating the terms or conditions of a mortgage loan, issuing mortgage loan commitments or interest rate guarantee agreements to borrowers, or engaging in tablefunding of mortgage loans, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers.
- (2) Act as a mortgage lender. – To engage in the business of making mortgage loans for compensation or gain.
- (3) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as

1 may be required pursuant to the terms of the mortgage loan, the
2 mortgage servicing loan documents, or servicing contract.

3 ~~(2a)~~(4) Affiliate. – Any company that controls, is controlled by, or is under
4 common control with another company, as set forth in the Bank
5 Holding Company Act of 1956 (12 U.S.C. § 1841), et seq., as
6 amended from time to time. For purposes of this subdivision, the term
7 control means ownership of all of the voting stock or comparable
8 voting interest of the controlled person.

9 ~~(2b)~~(5) Affiliated mortgage banker. – A licensed mortgage banker that meets
10 the criteria of either sub-subdivisions a., b., and c. of this subdivision
11 or sub-subdivisions d. and e. of this subdivision:

12 a. The licensee, by itself or with its affiliates, is licensed in five or
13 more states to engage in the mortgage lending business and (i)
14 is supervised by a state or federal regulatory agency whose
15 regulatory scheme has been determined by the Commissioner to
16 be substantially similar to that of North Carolina, (ii) is
17 organized and supervised under the laws of a state that has
18 adopted a model licensing law endorsed by the Commissioner;
19 or (iii) is supervised by a state or federal agency that is a party
20 to an interstate compact, or has otherwise entered into a
21 cooperative reciprocal agreement by which the state or federal
22 regulatory agency and the State of North Carolina, directly or
23 by duly authorized act of the Commissioner, have mutually
24 agreed to recognize state licensing laws which have specific
25 enumerated criteria.

26 b. The licensee, including its affiliates and wholly owned
27 subsidiaries, has more than 100 employees that are licensed
28 pursuant to this Article.

29 c. The licensee has a consolidated net worth of one hundred
30 million dollars (\$100,000,000) or more, or if the licensee does
31 not have the required net worth, its parent shall provide to the
32 Commissioner (i) evidence satisfactory to the Commissioner
33 that the parent has a net worth of one hundred million dollars
34 (\$100,000,000) or more, and (ii) an unconditional guarantee or
35 comparable instrument of surety satisfactory to the
36 Commissioner of the performance of the licensee of its
37 obligations under this Article.

38 d. The licensee is a direct or indirect wholly owned subsidiary of a
39 bank holding company or financial services holding company
40 subject to regulation by the Federal Reserve Board or the Office
41 of Thrift Supervision.

42 e. The licensee has a net worth of one hundred million dollars
43 (\$100,000,000) or, if the licensee does not have the required net
44 worth, (i) its parent, if it is not a bank holding company or

financial holding company, meets the requirements of sub-subdivision c. of this subdivision or (ii) its parent, if such parent is a bank holding company or financial holding company, has total assets in excess of ten billion dollars (\$10,000,000,000) and provides the Commissioner with the unconditional guarantee or comparable instrument of surety required by sub-subdivision c. of this subdivision.

(3)(6) Branch manager. – The individual whose principal office is physically located in, who is in charge of, and who is responsible for the business operations of a branch office of a mortgage broker or mortgage banker.

(4)(7) Branch office. – An office of the licensee acting as a mortgage broker or mortgage banker that is separate and distinct from the licensee's principal office. A branch office shall not be located at an individual's home or residence.

(5)(8) Commissioner. – The North Carolina Commissioner of Banks and the Commissioner's designees. For purposes of compliance with this Article by credit unions, Commissioner means the Administrator of the Credit Union Division of the Department of Commerce.

(6)(9) Control. – ~~Except as provided in subdivision (2a) of this section, "control" means the power to vote more than twenty percent (20%) of outstanding voting shares or other interests of a corporation, partnership, limited liability company, association, or trust. The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner, or executive officer; (ii) directly or indirectly has the right to vote ten percent (10%) or more of a class of a voting security or has the power to sell or direct the sale of ten percent (10%) or more of a class of voting securities; (iii) in the case of a Limited Liability Company, is a managing member; or (iv) in the case of a partnership, has the right to receive upon dissolution, or has contributed, ten percent (10%) or more of the capital, is presumed to control the company.~~

(7)(10) Employee. – An individual, who has an employment relationship, acknowledged by both the individual and the mortgage broker or mortgage banker or mortgage servicer and is treated as an a common law employee for purposes of compliance with the federal income tax laws. ~~laws and whose income is reported on IRS Form W-2.~~

(7a)(11) Exclusive mortgage broker. – An individual who acts as a mortgage broker exclusively for a single mortgage banker or single exempt person and who is licensed under the provisions of G.S. 53-243.05(c)(1a).

(8)(12) Exempt person. – The term includes any of the following:

- a. Any agency of the federal government or any state or municipal government granting or servicing mortgage loans under specific authority of the laws of any state or the United States.
- b. Any employee of a licensee whose responsibilities are limited to clerical and administrative tasks for his or her employer and who does not solicit borrowers, accept applications, or negotiate the terms of loans on behalf of the employer.
- c. Any person authorized to engage in business as a bank or a wholly owned subsidiary of a bank, a farm credit system, savings institution, or a wholly owned subsidiary of a savings institution, or credit union or a wholly owned subsidiary of a credit union, under the laws of the United States, this State, or any other state. Except for G.S. 53-243.11 and G.S. 53-243.15, this Article does not apply to the exempt persons set forth in this ~~sub-subdivision (8)~~ sub-subdivision.
- d. Any licensed real estate agent or broker who is performing those activities subject to the regulation of the North Carolina Real Estate Commission. Notwithstanding the above, an exempt person does not include a real estate agent or broker who receives compensation of any kind in connection with the referral, placement, or origination of a mortgage loan.
- e. Any officer or employee of an exempt person described in sub-subdivision c. of this subdivision when acting in the scope of employment for the exempt person.
- f. Any person who, acting as seller, seller and lender and servicer in a residential real estate transaction, receives and services in one calendar year no more than five purchase money notes secured by mortgages, deeds of trust, or other security instruments on the real estate sold as security for a the purchase money obligation.
- g. The North Carolina Housing Finance Agency as established by Article 122A of the General Statutes and the North Carolina Agricultural Finance Authority as established by Article 122D of the General Statutes.
- h. Any nonprofit corporation qualifying under section 501(c)(3) of the Internal Revenue Code which makes or services mortgage loans to promote home ownership or home improvements for the disadvantaged, provided that such corporation is not primarily in the business of soliciting or brokering or servicing mortgage loans.
- i. Any life insurance companies licensed to do business in North Carolina with regard to provisions concerning mortgage lenders.

- j. A North Carolina licensed attorney who, in the practice of law or in performing as a trustee, accepts payments related to a loan closing, default, foreclosure, loss mitigation, or litigation or settlement of a dispute or legal claim related to a loan.
- k. A mortgage banker licensed under this Article and any employee of a mortgage banker licensed under this Article are exempt from the requirement to obtain a separate license as a mortgage servicer, provided, however, that all provisions of this Article applicable to mortgage servicers are applicable to any mortgage banker or any employee of a mortgage banker acting as a mortgage servicer, including filing a claim of exemption under G.S. 53-243.15.
- ~~(9)~~(13) Licensee. – A loan officer, limited loan officer, mortgage broker, ~~or mortgage banker~~ mortgage banker, or mortgage servicer who is licensed pursuant to this Article.
- ~~(10)~~(14) Loan officer. – An individual who, in exchange for compensation as an employee of another person, accepts or offers to accept applications for mortgage loans, or who solicits or offers to solicit a mortgage loan, negotiates the terms or conditions of a mortgage loan, issues mortgage loan commitments or interest rate guarantee agreements to borrowers, whether such acts are done through contact by telephone, by electronic means, by mail, or in person with the borrowers or potential borrowers. The definition of loan officer shall not include any exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this section.
- ~~(10a)~~(15) Limited loan officer. – An individual who, in exchange for compensation as an employee of an affiliated mortgage banker, directly solicits, negotiates, offers, or makes commitments for mortgage loans. The definition of limited loan officer shall not include any exempt person described in sub-subdivision ~~(8)b.~~(12)b. of this section.
- ~~(11)~~(16) Make a mortgage loan. – To close a mortgage loan, to advance funds, to offer to advance funds, or to make a commitment to advance funds to a borrower under a mortgage loan.
- (12) ~~Managing principal. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker.~~
- ~~(13)~~(17) Mortgage banker. – A person who acts as a mortgage lender as that term is defined in subdivision (2) of this section. However, the definition does not include a person who acts as a mortgage lender only in tablefunding transactions.
- ~~(14)~~(18) Mortgage broker. – A person who acts as a mortgage broker as that term is defined in subdivision (1) of this section. The term "mortgage broker" includes an exclusive mortgage broker, except when expressly provided otherwise.

- (15)(19) Mortgage loan. – A loan made to a natural person or persons primarily for personal, family, or household use, primarily secured by either a mortgage or a deed of trust on residential real property located in North Carolina.
- (20) Mortgage servicer. – A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (3) of this section or who otherwise meets the definition of 'servicer' in RESPA, 12 U.S.C. § 2605(i), with respect to mortgage loans.
- (15a)(21) Parent. – The person that controls an affiliated mortgage banker, banker, mortgage broker, or mortgage servicer, as control is defined in subdivision (2a)(4) of this section.
- (16)(22) Person. – An individual, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.
- (17)(23) Qualified lender. – A person who is engaged as a mortgage lender in North Carolina and is either a supervised or a nonsupervised institution, as these terms are defined in 24 C.F.R. § 202.2, approved by the United States Department of Housing and Urban Development.
- (18)(24) Qualified person. – A person who is employed as a loan officer by a qualified lender, or by a mortgage banker or broker registered with the Commissioner under former Article 19 of this Chapter, or who is a general partner, manager, or officer of a qualified lender, registered mortgage banker, or registered mortgage broker.
- (25) Qualified servicer. – A person who is engaged in the business of acting as a mortgage servicer in North Carolina and who has been approved by the United States Department of Housing and Urban Development to service FHA loans or has been approved as a servicer by either the Federal National Mortgage Association or by the Federal Home Loan Mortgage Corporation.
- (26) Qualifying individual. – A person who meets the requirements of G.S. 53-243.05(c) and who agrees to be primarily responsible for the operations of a licensed mortgage broker or mortgage banker or mortgage servicer.
- (19)(27) Residential real property. – Real property located in the State of North Carolina upon which there is located or is to be located one or more single-family dwellings or dwelling units.
- (28) RESPA. – The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq., as it may be hereafter amended.
- (20)(29) Tablefunding. – A transaction where a licensee closes a loan in its own name with funds provided by others, and the loan is assigned simultaneously to the mortgage lender providing the funding within one business day of the funding of the loan."

SECTION 2. G.S. 53-243.02 reads as rewritten:

"§ 53-243.02. License required; licensee records.

1 (a) Other than an exempt person, it is unlawful for any person in this State to act
2 as a mortgage ~~broker or broker~~, mortgage banker, or mortgage servicer, or directly or
3 indirectly to engage in the business of a mortgage ~~broker or abroker~~, mortgage
4 ~~banker, banker~~, or mortgage servicer, without first obtaining a license from the
5 Commissioner under the provisions of this Article. This Article shall apply to any
6 person who seeks to avoid its application by any direct or indirect device, subterfuge,
7 artifice, or pretense whatsoever.

8 ...
9 (e) No person, other than an exempt person, shall hold himself or herself out as a
10 mortgage banker, an affiliated mortgage banker, a mortgage broker, a mortgage
11 servicer, a limited loan officer, or a loan officer unless such person is licensed in
12 accordance with this Article.

13 (f) Any person who has completed and filed with the Commissioner the
14 application and all documents required for licensure as a loan officer other than
15 documents relating to the required examination and the mortgage lending fundamentals
16 course may act as a loan officer during the period before action is taken on the
17 application by the Commissioner, if:

18 (1) The Commissioner has not denied, revoked, or taken any adverse
19 action with respect to an application filed by or license held by such
20 person during the five-year period ending on the date of filing of the
21 application;

22 (2) The loan officer is employed by a licensed mortgage broker or
23 mortgage banker, and the ~~managing principal~~qualifying individual of
24 such mortgage broker or mortgage banker (i) certifies to the
25 Commissioner in writing that the ~~managing principal~~qualifying
26 individual reasonably believes that the application of the person for
27 licensure as a loan officer meets or exceeds all of the relevant
28 requirements of this Article for licensure and (ii) undertakes in writing
29 that the ~~managing principal~~qualifying individual and the employer will
30 be responsible for the acts of the applicant during the period that such
31 application is pending; and

32 (3) The person is currently or has within the six-month period prior to the
33 date of the application been employed as and acting as a loan officer
34 for an exempt entity which entity is exempt by virtue of an exemption
35 claimed under G.S. 53-243.01(8)~~e~~.53-243.01(12)c.

36 (g) The Commissioner may deny or suspend the rights of a mortgage broker or
37 mortgage banker to employ a loan officer acting under subsection (f) of this section if
38 the Commissioner finds that the mortgage broker or mortgage banker, or the ~~managing~~
39 ~~principal~~qualifying individual thereof, makes the certification or undertaking set forth in
40 subdivision (2) of subsection (f) of this section not in good faith."

41 **SECTION 3. G.S. 53-243.05 reads as rewritten:**

42 **"§ 53-243.05. Qualifications for licensure; issuance.**

43 (a) Any person, other than an exempt person, desiring to obtain a license
44 pursuant to this Article shall make written application for licensure to the Commissioner

on forms prescribed by the Commissioner. In accordance with rules adopted by the Commission, the application shall contain any information the Commissioner deems necessary regarding the following:

- (1) The applicant's name and address (including street address, mailing address, e-mail, and telephone contact information) and social security ~~number~~-number or taxpayer identification number.
 - (2) The applicant's form and place of organization, if applicable.
 - (3) The applicant's proposed method of and locations for doing business, if applicable.
 - (4) The qualifications and business history of the applicant and, if applicable, the business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the applicant, including:
 - (i) a description of any injunction or administrative order by any state or federal authority to which the person is or has been subject; (ii) a ~~conviction~~-conviction, within the past 10 years, of a misdemeanor involving ~~fraudulent dealings or moral turpitude or relating to any aspect of the residential mortgage lending business~~any fraud, false statement or omission, any theft or wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or conspiracy to commit any of these offenses; or involving any financial service or financial service-related business; (iii) any felony convictions.
 - (5) With respect to an application for licensing as a mortgage ~~banker or broker~~,banker, mortgage broker, or mortgage servicer, the applicant's financial condition, credit history, and business history; and with respect to the application for licensing as a loan officer, the applicant's credit history and business history.
 - (6) The applicant's consent to a federal and State criminal history record check and a set of the applicant's fingerprints in a form acceptable to the Commissioner. In the case of an applicant that is a corporation, partnership, limited liability company, association, or trust, each individual who has control of the applicant or who is the ~~managing principal~~qualifying individual or a branch manager shall consent to a federal and State criminal history record check and submit a set of that individual's fingerprints pursuant to this subdivision. Refusal to consent to a criminal history record check constitutes grounds for the Commissioner to deny licensure to the applicant as well as to any entity (i) by whom or by which the applicant is employed, (ii) over which the applicant has control, or (iii) as to which the applicant is the current or proposed ~~managing principal~~qualifying individual or a current or proposed branch manager.
- (b) In addition to the requirements imposed by the Commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

- (1) Be at least 18 years of age.
- (2) Have satisfactorily completed, within the three years immediately preceding the date application is made, a mortgage lending fundamentals course approved by the Commissioner. The course shall consist of at least eight hours of classroom instruction in subjects related to mortgage lending approved by the Commissioner. In addition, the applicant shall have satisfactorily completed a written examination approved by the Commissioner or possess residential mortgage lending education or experience in residential mortgage lending transactions that the Commissioner deems equivalent to the course.

(c) In addition to the requirements under subsection (a) of this section, each applicant for licensure as a mortgage broker or mortgage banker or mortgage servicer at the time of application and at all times thereafter shall comply with the following requirements:

- (1) Except as provided for in subdivision (1a) of this subsection, if the applicant is a sole proprietor, the applicant shall have at least three years of experience in residential mortgage lending or other experience or competency requirements as the Commissioner may impose. Experience as an exclusive mortgage broker or as a limited loan officer shall not constitute mortgage-lending experience under this subdivision.

- (1a) If an individual applicant to be licensed as a mortgage broker meets all other requirements for licensure under this section but does not meet the requirements of subdivision (1) of this subsection, the individual applicant may be licensed as an exclusive mortgage broker upon compliance with all of the following:

- a. Successfully complete both a residential mortgage-lending course approved by the Commissioner of not less than 40 hours of classroom instruction, and a written examination approved by the Commissioner.
- b. Act exclusively as a mortgage broker for a single mortgage banker licensee or single exempt mortgage banker for whom the broker shall be deemed an agent, who shall be responsible for supervising the broker as required by this Article, who shall sign the license application of the applicant, and who shall be jointly and severally liable with the broker for any claims arising out of the broker's mortgage lending activities.
- c. Shall be compensated for the broker's mortgage brokering activities on a basis that is not dependent upon the loan amount, interest rate, fees, or other terms of the loans brokered.
- d. Shall not handle borrower or other third-party funds in connection with the brokering or closing of mortgage loans.

- 1 (2) If the applicant is a general or limited partnership, at least one of its
2 general partners shall have the experience as described under
3 subdivision (1) of this subsection.
- 4 (3) If the applicant is a corporation, at least one of its principal officers
5 shall have the experience as described under subdivision (1) of this
6 subsection.
- 7 (4) If the applicant is a limited liability company, at least one of its
8 managers shall have the experience as described under subdivision (1)
9 of this subsection.

10 (d) Each applicant shall identify one person meeting the requirements of
11 subsection (c) of this section to serve as the applicant's ~~managing principal~~ qualifying
12 individual.

13 (e) Every applicant for initial licensure shall pay a filing fee not to exceed one
14 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage ~~broker or broker,~~
15 mortgage ~~banker-banker, or mortgage servicer~~ or sixty-seven dollars and fifty cents
16 (\$67.50) for licensure as a loan officer or limited loan officer, in addition to the actual
17 cost of obtaining credit reports and State and national criminal history record checks.

18 (f) A mortgage banker or mortgage servicer shall post a surety bond in the
19 amount of one hundred fifty thousand dollars (\$150,000), and a mortgage broker shall
20 post a surety bond in the amount of fifty thousand dollars (\$50,000). The surety bond
21 shall be in a form satisfactory to the Commissioner and shall run to the State for the
22 benefit of any claimants against the licensee to secure the faithful performance of the
23 obligations of the licensee under this Article. The aggregate liability of the surety shall
24 not exceed the principal sum of the bond. A party having a claim against the licensee
25 may bring suit directly on the surety bond, or the Commissioner may bring suit on
26 behalf of any claimants, either in one action or in successive actions. Consumer claims
27 shall be given priority in recovering from the bond. Any appropriate deposit of cash or
28 securities shall be accepted in lieu of any bond that is required. An audited financial
29 statement from a qualified lender or qualified servicer showing a net worth of two
30 hundred fifty thousand dollars (\$250,000) or more shall be accepted in lieu of any bond
31 required.

32 (g) Any general partner, manager of a limited liability company, or officer of a
33 corporation who individually meets the requirements under subsection (b) of this
34 section shall, upon payment of the applicable fee, meet the qualifications for licensure
35 as a loan officer subject to the provisions of subsection (i) of this section.

36 (h) Each principal office and each branch office of a mortgage broker or
37 mortgage banker licensed under the provisions of this Article shall be issued a separate
38 license. A licensed mortgage broker or mortgage banker shall file with the
39 Commissioner an application on a form prescribed by the Commissioner that identifies
40 the address of the principal office and each branch office and branch manager. A filing
41 fee not to exceed one hundred twenty-five dollars (\$125.00) shall be assessed by the
42 Commissioner for each branch office issued a license.

43 (i) If the Commissioner determines that an applicant meets the qualifications for
44 licensure and finds that the financial responsibility, character, and general fitness of the

1 applicant are such as to command the confidence of the community and to warrant
2 belief that the business will be operated honestly and fairly, the Commissioner shall
3 issue a license to the applicant. In addition, for an applicant qualifying as an exclusive
4 mortgage broker, the Commissioner shall determine if the mortgage broker/mortgage
5 banker relationship is in the public interest."

6 **SECTION 4.** G.S. 53-243.06 reads as rewritten:

7 **"§ 53-243.06. License renewal; termination.**

8 (a) All licenses issued by the Commissioner under the provisions of this Article
9 shall expire annually on the ~~30th day of June~~ 31st day of December following issuance
10 or on any other date that the Commissioner may determine. The license shall become
11 invalid after that date unless renewed. A license may be renewed ~~45 days prior to the~~
12 ~~expiration date on or after November 1~~ by compliance with subsection (b1) of this
13 section and by paying to the Commissioner, in addition to the actual cost of obtaining
14 credit reports and State and national criminal history record checks and of processing
15 fees of the nationwide system as the Commissioner may require, a renewal fee as
16 follows:

- 17 (1) Licensed mortgage bankers and licensed mortgage servicers shall pay
18 an annual fee not to exceed six hundred twenty-five dollars (\$625.00)
19 and one hundred twenty-five dollars (\$125.00) for each branch office.
- 20 (2) Licensed mortgage brokers shall pay an annual fee not to exceed six
21 hundred twenty-five dollars (\$625.00) and one hundred twenty-five
22 dollars (\$125.00) for each branch office. Licensed exclusive mortgage
23 brokers shall pay an annual fee not to exceed six hundred twenty-five
24 dollars (\$625.00).
- 25 (3) Licensed loan officers shall pay an annual fee not to exceed
26 sixty-seven dollars and fifty cents (\$67.50).

27 (b) If a mortgage ~~banker~~ banker, mortgage servicer, or mortgage broker license is
28 not renewed prior to the applicable expiration date, then ~~an additional two hundred fifty~~
29 ~~dollars (\$250.00)~~ in addition to the renewal fee under subsection (a) of this section shall
30 be assessed as a late fee to any renewal. If a loan officer or limited loan officer license is
31 not renewed prior to the applicable expiration date, then ~~an additional fifty one hundred~~
32 ~~dollars (\$50.00)~~ \$100.00 in addition to the renewal fee under subsection (a) of this
33 section shall be assessed as a late fee to any renewal. In the event a licensee fails to
34 obtain a reinstatement of the license ~~within 90 days after the date the license expires,~~
35 prior to March 1, the Commissioner may require the licensee to comply with the
36 requirements for the initial issuance of a license under the provisions of this Article.

37 (b1) When required by the Commissioner, each individual described in
38 G.S. 53-245.05(a)(6) shall furnish to the Commissioner his or her consent to a criminal
39 history record check and a set of his or her fingerprints in a form acceptable to the
40 Commissioner. Refusal to consent to a criminal history record check may constitute
41 grounds for the Commissioner to deny renewal of the license of the person as well as
42 the license of any other person by which he or she is employed, over which he or she
43 has control, or as to which he or she is the current or proposed managing
44 principal qualifying individual or a current or proposed branch manager.

(c) Licenses issued under this Article are not assignable. Control of a licensee shall not be acquired through a stock purchase or other device without the prior written consent of the Commissioner. The Commissioner shall not give written consent if the Commissioner finds that any of the grounds for denial, revocation, or suspension of a license pursuant to G.S. 53-243.12 are applicable to the acquiring person."

SECTION 5. G.S. 53-243.08 reads as rewritten:

"§ 53-243.08. ~~Managing principals~~Qualifying individuals and branch managers.

Each mortgage broker or mortgage banker or mortgage servicer licensed under this Article shall have a ~~managing principal~~qualifying individual who operates the business under that person's full charge, control, and supervision. Mortgage bankers and mortgage brokers, other than exclusive mortgage brokers, may operate branch offices subject to the requirements of this Article. Each principal and branch office of a mortgage broker or mortgage banker licensed under this Article, shall have a branch manager who meets the experience requirements under G.S. 53-243.05(c)(1); provided, that an affiliated mortgage banker may designate a branch manager who does not meet the experience requirements so long as at or before the designation, it certifies that the person has been employed by the affiliated mortgage banker for at least one year as a loan officer, limited loan officer, or in a comparable position in another state. The ~~managing principal~~qualifying individual for a licensee's business may also serve as the branch manager of one of the licensee's branch offices. Each mortgage broker or mortgage banker licensed under this Article shall file a form as prescribed by the Commissioner indicating the business's designation of ~~managing principal~~qualifying individual and branch manager for each branch and each individual's acceptance of the responsibility. Each mortgage broker or mortgage banker licensed under this Article shall notify the Commissioner of any change in its ~~managing principal~~qualifying individual or branch manager designated for each branch. Each mortgage servicer licensed under this Article shall file a form prescribed by the Commissioner indicating the business's designation of its qualifying individual and shall notify the Commissioner of any change in its qualifying individual. Any licensee who does not comply with this provision shall have the licensee's license suspended pursuant to G.S. 53-243.12 until the licensee complies with this section. Any individual licensee who operates as a sole proprietorship shall be considered a ~~managing principal~~qualifying individual for the purposes of this Article."

SECTION 6. G.S. 53-243.09 reads as rewritten:

"§ 53-243.09. Offices; address changes; display of license.

(a) Each mortgage broker licensee shall maintain and transact business from a principal place of business in this State. A principal place of business in this State shall consist of at least one enclosed room or building of stationary construction in which negotiations of mortgage loan transactions of others may be conducted and carried on in privacy and in which all of the books, records, and files pertaining to mortgage loan transactions relating to borrowers in this State are maintained. However, the Commissioner may, by rule, impose terms and conditions under which the records and files may be maintained outside of this State. A principal place of business shall not be located at an individual's home or residence.

1 (b) A mortgage banker or mortgage broker or mortgage servicer licensee shall
2 report any change of address of the principal place of business or any branch office
3 within 15 days after the change.

4 (c) Each mortgage broker or mortgage banker licensed under this Article shall
5 display in plain public view the certificate of licensure issued by the Commissioner in
6 its principal office and in each branch office. Each loan officer licensed under this
7 Article shall ~~display~~ display, in plain public view, in each branch office in which the
8 officer acts as a loan officer the certificate of licensure issued by the Commissioner."

9 **SECTION 7. G.S. 53-243.10 reads as rewritten:**

10 **"§ 53-243.10. Mortgage broker ~~duties~~duties; mortgage servicer duties.**

11 (a) A mortgage broker, including any mortgage broker licensee and any person
12 ~~required to be licensed~~ acting as a mortgage broker under this Article, shall, in addition
13 to duties imposed by other statutes or at common law, shall do all of the following:

- 14 (1) Safeguard and account for any money handled for the borrower.
- 15 (2) Follow reasonable and lawful instructions from the borrower.
- 16 (3) Act with reasonable skill, care, and diligence.
- 17 (4) Make reasonable efforts to secure a loan that is reasonably
18 advantageous to the borrower considering all the circumstances,
19 including the rates, charges, and repayment terms of the loan.
- 20 (5) Timely and clearly disclose to the borrower material information as
21 specified by the Commission that may be expected to influence the
22 borrower's decision and is reasonably accessible to the mortgage
23 broker, including the total compensation the mortgage broker expects
24 to receive from any and all sources in connection with each loan
25 option presented to the borrower.
- 26 (6) Notify before closing each lender of the particulars of each of the other
27 lender's loans if the mortgage broker knows that more than one
28 mortgage loan will be made by different lenders contemporaneously to
29 a borrower secured by the same real property.
- 30 (7) Ensure that any services offered to any applicant shall be available and
31 offered to all similarly situated applicants on an equal basis.
- 32 (8) In transactions where the broker has the ability to make credit
33 decisions, use reasonable means to provide the borrower with prompt
34 credit decisions on its loan applications and, where the credit is denied,
35 to comply fully with the notification requirements of applicable state
36 and federal law.
- 37 (9) Ensure that its advertising materials are designed to make customers
38 and potential customers aware that ~~one~~ the mortgage broker does not
39 discriminate on any prohibited basis.

40 (b) A mortgage servicer licensed or acting under this Article, in addition to duties
41 imposed by other statutes or at common law, shall do all of the following:

- 42 (1) Safeguard and account for any money handled for the borrower.
- 43 (2) Follow reasonable and lawful instructions from the borrower.
- 44 (3) Act with reasonable skill, care, and diligence.

- 1 (4) With its application and renewal and with its supplemental filings
2 made from time to time, file with the Commissioner a complete,
3 current schedule of the ranges of costs and fees it charges borrowers
4 for its servicing-related activities.
- 5 (5) File with the Commissioner upon request a report in a form and format
6 acceptable to the Commissioner detailing the servicer's activities in
7 this State, including:
- 8 a. The number of mortgage loans the servicer is servicing.
9 b. The type and characteristics of such loans in this State.
10 c. The number of serviced loans in default, along with a
11 breakdown of 30-, 60-, and 90-day delinquencies.
12 d. Information on loss mitigation activities, including details on
13 workout arrangements undertaken.
14 e. Information on foreclosures commenced in this State.
- 15 (6) At the time a servicer accepts assignment of servicing rights for a
16 mortgage loan, the servicer shall disclose to the borrower all of the
17 following:
- 18 a. Any notice required by RESPA or by regulations promulgated
19 thereunder.
20 b. A schedule of the ranges and categories of its costs and fees for
21 its servicing-related activities, which shall comply with North
22 Carolina law and which shall not exceed those reported to the
23 Commissioner.
24 c. A notice in a form and content acceptable to the Commissioner
25 that the servicer is licensed by the Commissioner and that
26 complaints about the servicer may be submitted to the
27 Commissioner.
28 d. Any notice required by Article 2A, Article 4, or Article 10 of
29 Chapter 45 of the General Statutes.
- 30 (7) In the event of a delinquency or other act of default on the part of the
31 borrower, the servicer shall act in good faith to inform the borrower of
32 the facts concerning the loan and the nature and extent of the
33 delinquency or default, and, if the borrower replies, to negotiate with
34 the borrower, subject to the servicer's duties and obligations under the
35 mortgage servicing contract, if any, to attempt a resolution or workout
36 to the delinquency."

37 **SECTION 8.** G.S. 53-243.11 reads as rewritten:

38 **"§ 53-243.11. Prohibited activities.**

39 In addition to the activities prohibited under other provisions of this Article, it shall
40 be unlawful for any person in the course of any mortgage loan transaction:

- 41 (1) To misrepresent or conceal the material facts or make false promises
42 likely to influence, persuade, or induce an applicant for a mortgage
43 loan or a mortgagor to take a mortgage loan, or to pursue a course of
44 misrepresentation through agents or otherwise.

- (2) To refuse improperly to issue a satisfaction of a mortgage.
- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, servicer, broker, or loan officer is not entitled to retain under the circumstances.
- (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article, including a mortgage loan brokered by any unlicensed person other than an exempt person.
- (5) To charge or collect any fee or rate of interest or to make or broker or service any mortgage loan with terms or conditions or in a manner contrary to the provisions of ~~Chapter 24~~ Chapter 24, Chapter 45, or Chapter 54 of the General Statutes.
- (6) To advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants.
- (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.
- (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making or servicing of, or purchase or sale of, any mortgage loan.
- (9) To fail promptly to pay when due reasonable fees to a licensed appraiser for appraisal services that are:
 - a. Requested from the appraiser in writing by the mortgage broker or mortgage banker or an employee of the mortgage broker or mortgage banker; and
 - b. Performed by the appraiser in connection with the origination or closing of a mortgage loan for a customer or the mortgage broker or mortgage banker.
- (10) To broker a mortgage loan that contains a prepayment penalty if the principal amount of the loan is one hundred fifty thousand dollars (\$150,000) or less or if the loan is a rate spread home loan as defined in G.S. 24-1.1F.
- (11) To improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan. Nothing in this subdivision shall be construed to prohibit a mortgage ~~broker or mortgage banker~~ broker, mortgage banker, or mortgage servicer from asking the appraiser to do one or more of the following:
 - a. Consider additional appropriate property information.

- b. Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
- c. Correct errors in the appraisal report.
- (12) To fail to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by sections 6 and 10 of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605 and § 2609, and regulations adopted thereunder by the Secretary of the Department of Housing and Urban Development.
- (13) To broker a rate spread adjustable rate mortgage loan without disclosing to the borrower the terms and costs associated with a fixed rate loan from the same lender at the lowest annual percentage rate for which the borrower qualifies.
- (14) To fail to comply with applicable federal laws and regulations related to mortgage ~~lending~~, lending, or mortgage servicing.
- (15) To engage in unfair, misleading, or deceptive advertising related to a solicitation for a mortgage loan.
- (16) For a mortgage servicer to fail to comply with the mortgage servicer's obligations under Article 10 of Chapter 45 of the North Carolina General Statutes.
- (17) For a person acting as a mortgage servicer to fail to provide written notice to a borrower upon taking action to place hazard, homeowner's, or flood insurance on the mortgaged property or to place such insurance when the person acting as a mortgage servicer knows or has reason to know that such insurance is in effect.
- (18) For a person acting as a mortgage servicer to place hazard, homeowner's, or flood insurance on a mortgaged property for an amount that exceeds either the value of the insurable improvements or the last known coverage amount of insurance.
- (19) For a person acting as a mortgage servicer to fail to provide to the borrower a refund of unearned premiums paid by a borrower or charged to the borrower for hazard, homeowner's, or flood insurance placed by a lender if the borrower provides reasonable proof that the borrower has obtained coverage such that the forced placement is no longer necessary and the property is insured. If the borrower provides reasonable proof within 12 months of the placement that no lapse in coverage occurred such that the forced placement was not necessary, the servicer shall refund the entire premium.
- (20) For a person acting as a mortgage servicer to refuse to reinstate a delinquent loan upon a tender of payment made timely under the contract which is sufficient in amount, based upon the last written statement received by borrower, to pay all past due amounts, outstanding or overdue charges, and restore the loan to a

1 nondelinquent status, but this reinstatement shall be available to a
2 borrower no more than twice in any 24-month period.

3 (21) For a person acting as a mortgage servicer to fail to mail, at least 30
4 days before foreclosure is initiated, a notice addressed to the borrower
5 at the borrower's last known address with the following information:

6 a. An itemization of all past due amounts causing the loan to be in
7 default.

8 b. An itemization of any other charges that must be paid in order
9 to bring the loan current.

10 c. A statement that the borrower may have options available other
11 than foreclosure, and that the borrower may discuss such
12 options with the mortgage lender, the servicer, or a counselor
13 approved by the U.S. Department of Housing and Urban
14 Development.

15 d. The address, telephone number, and other contact information
16 for the mortgage lender, the servicer, or the agent for either of
17 them who is authorized to attempt to work with the borrower to
18 avoid foreclosure.

19 e. The name, address, telephone number, and other contact
20 information for three or more HUD-approved counseling
21 agencies operating to assist borrowers in North Carolina to
22 avoid foreclosure.

23 f. The address, telephone number, and other contact information
24 for the consumer complaint section of the Office of the
25 Commissioner of Banks.

26 (22) To fail to make all payments from any escrow account held for the
27 borrower for insurance, taxes, and other charges with respect to the
28 property in a timely manner so as to ensure that no late penalties are
29 assessed or other negative consequences result regardless of whether
30 the loan is delinquent unless there are not sufficient funds in the
31 account to cover the payments, and the servicer has a reasonable basis
32 to believe that recovery of the funds will not be possible."

33 **SECTION 9. G.S. 53-243.12 reads as rewritten:**

34 **"§ 53-243.12. Disciplinary authority.**

35 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
36 renew a license of a licensee or applicant under this Article or may restrict or limit the
37 activities relating to mortgage loans of any licensee or any person who owns an interest
38 in or participates in the business of a licensee, if the Commissioner finds both of the
39 following:

40 (1) That the order is in the public interest.

41 (2) That any of the following circumstances apply to the applicant,
42 licensee, or any partner, member, manager, officer, director, loan
43 officer, limited loan officer, ~~managing principal, qualifying individual,~~
44 or any person occupying a similar status or performing similar

functions or any person directly or indirectly controlling the applicant or licensee. The person:

- a. Has filed an application for license that, as of its effective date or as of any date after filing, contained any statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact.
- b. Has violated or failed to comply with any provision of this Article, rule adopted by the Commissioner, or order of the Commissioner.
- c. Has been convicted of any felony, or, within the past 10 years, has been convicted of any misdemeanor involving ~~mortgage lending or any aspect of the mortgage lending business, or any offense involving breach of trust, moral turpitude, or fraudulent or dishonest dealing,~~ or financial services or a financial services-related business or any fraud, false statements or omissions, theft or any wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.
- d. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the mortgage lending business.
- e. Is the subject of an order of the Commissioner denying, suspending, or revoking that person's license as a mortgage ~~broker or mortgage banker~~ broker, mortgage banker, or mortgage servicer.
- f. Is the subject of an order entered within the past five years by the authority of any state with jurisdiction over that state's mortgage ~~brokerage or mortgage banking~~ brokerage, mortgage banking, or mortgage-servicing industry denying or revoking that person's license as a mortgage ~~broker or mortgage banking industry or denying or revoking that person's license as a mortgage broker or mortgage banker~~ broker, mortgage servicer, or mortgage banker.
- g. Does not meet the qualifications or the financial responsibility, character, or general fitness requirements under G.S. 53-243.05 or any bond or capital requirements under this Article.
- h. Has been the executive officer or controlling shareholder or owned a controlling interest in any mortgage broker or mortgage banker or mortgage servicer who has been subject to an order or injunction described in sub-subdivision d., e., or f. of this subdivision.
- i. Has failed to pay the proper filing or renewal fee under this Article. However, the Commissioner may enter only a denial

1 order under this sub-subdivision, and the Commissioner shall
2 vacate the order when the deficiency has been corrected.

3 j. Has falsely certified attendance or completion of hours at an
4 approved mortgage lending continuing education course.

5 (b) The Commissioner may, by order, summarily postpone or suspend the license
6 of a licensee pending final determination of any proceeding under this section. Upon
7 entering the order, the Commissioner shall promptly notify the applicant or licensee that
8 the order has been entered and the reasons for the order. The Commissioner shall
9 calendar a hearing within 15 days after the Commissioner receives a written request for
10 a hearing. If a licensee does not request a hearing and the Commissioner does not
11 request a hearing, the order will remain in effect until it is modified or vacated by the
12 Commissioner. If a hearing is requested or ordered by the Commissioner, after notice of
13 and opportunity for hearing, the Commissioner may modify or vacate the order or
14 extend it until final determination.

15 (c) The Commissioner may, by order, impose a civil penalty upon a licensee or
16 any partner, officer, director, or other person occupying a similar status or performing
17 similar functions on behalf of a licensee for any violation of this Article. The civil
18 penalty shall not exceed ten thousand dollars (\$10,000) for each violation of this Article
19 by a mortgage ~~broker or mortgage banker~~, broker, mortgage banker, or mortgage
20 servicer. The Commissioner may impose a civil penalty of up to ten thousand dollars
21 (\$10,000) for each violation of this Article by a person other than a licensee or exempt
22 person.

23 (d) In addition to other powers under this Article, upon finding that any action of
24 a person is in violation of this Article, the Commissioner may order the person to cease
25 from the prohibited action. If the person subject to the order fails to appeal the order of
26 the Commissioner in accordance with G.S. 53-243.03, or if the person appeals and the
27 appeal is denied or dismissed, and the person continues to engage in the prohibited
28 action in violation of the Commissioner's order, the person shall be subject to a civil
29 penalty of up to twenty-five thousand dollars (\$25,000) for each violation of the
30 Commissioner's order. The penalty provision of this section shall be in addition to and
31 not in lieu of any other provision of law applicable to a licensee for the licensee's failure
32 to comply with an order of the Commissioner.

33 (e) Unless otherwise provided, all actions and hearings under this Article shall be
34 governed by Chapter 150B of the General Statutes.

35 (f) When a licensee is accused of any act, omission, or misconduct that would
36 subject the licensee to disciplinary action, the licensee, with the consent and approval of
37 the Commissioner, may surrender the license and all the rights and privileges pertaining
38 to it for a period of time established by the Commissioner. A person who surrenders a
39 license shall not be eligible for or submit any application for licensure under this
40 Article.

41 (g) If the Commissioner has reasonable grounds to believe that a licensee or other
42 person has violated the provisions of this Article or that facts exist that would be the
43 basis for an order against a licensee or other person, the Commissioner may at any time,
44 either personally or by a person duly designated by the Commissioner, investigate or

1 examine the loans and business of the licensee and examine the books, accounts,
2 records, and files of any licensee or other person relating to the complaint or matter
3 under investigation. The Commissioner may require any licensee or other person to
4 submit a consent to a criminal history record check and a set of that person's fingerprints
5 in a form acceptable to the Commissioner in connection with any examination or
6 investigation. Refusal to submit the requested criminal history record check or a set of
7 fingerprints shall be grounds for disciplinary action. The reasonable cost of this
8 investigation or examination shall be charged against the licensee.

9 (h) The Commissioner may issue subpoenas to require the attendance of and to
10 examine under oath all persons whose testimony the Commissioner deems relative to
11 the person's business.

12 (i) The Commissioner may from time to time, at the expense of the
13 ~~Commissioner's office,~~ licensee, conduct routine examinations of the books and records
14 of any licensee in order to determine the compliance with this Article and any rules
15 adopted pursuant to the authority of G.S. 53-243.04.

16 (j) In addition to the rights described under this section, the Commissioner may
17 require a licensee to pay to a borrower or other individual any amounts received by the
18 licensee or its employees in violation of Chapter 24 of the General Statutes. Statutes, or,
19 if a servicer, in excess of those allowed by law to servicers.

20 (k) If the Commissioner finds that the ~~managing principal, qualifying individual,~~
21 branch manager, or loan officer of a licensee had knowledge of or reasonably should
22 have had knowledge of, or participated in, any activity that results in the entry of an
23 order under this section suspending or withdrawing the license of a licensee, the
24 Commissioner may prohibit the branch manager, ~~managing principal, qualifying~~
25 individual, or loan officer from serving as a branch manager, ~~managing~~
26 principal, qualifying individual, or loan officer for any period of time the Commissioner
27 deems necessary.

28 (l) In addition to the authority to require criminal history background checks as
29 set forth in G.S. 53-243.05 and G.S. 53-243.06, the Commissioner shall have the
30 authority to require a criminal history background check at any other time as a condition
31 of continued licensure. Upon the request of the Commissioner, a licensee shall furnish
32 to the Commissioner the licensee's consent to a criminal history record check and a set
33 of the licensee's fingerprints in a form acceptable to the Commissioner. Refusal to
34 consent to a criminal history record check under this subsection may constitute grounds
35 for the Commissioner to suspend or revoke the license of the licensee.

36 (m) Subject to the provisions of G.S. 53-243.03, the Commissioner may, by order,
37 prohibit licensees under this Article from engaging in acts and practices in connection
38 with mortgage loans that the Commissioner finds to be unfair, deceptive, designed to
39 evade the laws of this State, or that are not in the best interest of the borrowing public.

40 (n) In the event the Commissioner shall have evidence that a material violation of
41 law has occurred in the origination or servicing of a loan then being foreclosed or then
42 delinquent and in threat of foreclosure, and that the putative violation would be
43 sufficient in law or equity to base a claim or affirmative defense which would affect the
44 validity or enforceability of the underlying contract or the right to foreclose, then the

Commissioner may notify the Clerk of Superior Court, and the Clerk shall suspend foreclosure proceedings on the mortgage for 60 days from the date of the notice. In the event that the Commissioner notifies the Clerk, the Commissioner shall also notify the servicer, if known, and provide an opportunity to cure the violation or provide information to the Commissioner to rebut the evidence of the suspected violation. If the violation is cured or the information satisfies the Commissioner that no material violation has occurred, the Commissioner shall notify the Clerk so that the foreclosure proceeding may be resumed.

(o) The Commissioner shall be deemed to have complied with the requirements of law concerning service of process upon mailing by certified mail any notice required or permitted to a licensee under this Article, postage prepaid and addressed to the last known address of the licensee on file with the Commissioner pursuant to G.S. 53-243.13(d).

(p) The Commissioner is authorized to take action, including suspension of the license, if the licensee fails to respond within 20 days, or within a lesser time if specifically requested for good cause, to inquiries from the Commissioner or the Commissioner's designee regarding any complaints filed against the licensee which allege or appear to involve violation of this Article or any law or rule affecting the mortgage lending business.

(q) The Commissioner is authorized to take action, including suspension of the license, if the licensee fails to respond within 20 days, or within a lesser time if specifically requested for good cause, to and cooperate fully with notices from the Commissioner or the Commissioner's designee relating to the scheduling and conducting of an examination or investigation under this Article."

SECTION 10. G.S. 53-243.13(e) reads as rewritten:

"(e) A licensee shall maintain in a segregated escrow fund or trust account any funds which come into the licensee's possession, but which are not the licensee's property and which the licensee is not entitled to retain under the circumstances. The escrow fund or trust account shall be held on deposit in a federally insured financial institution. Individual loan applicants' or borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the common fund can be individually tracked and accounted for, and (ii) the common fund is kept separate from and is not commingled with the licensee's own funds."

SECTION 11. G.S. 53-243.14 reads as rewritten:

"§ 53-243.14. Criminal penalty.

A violation of G.S. 53-243.02 is a ~~Class I felony~~. Class 3 misdemeanor. Each transaction involving the unlawful making or brokering or servicing of a mortgage loan is a separate offense."

SECTION 12. G.S. 53-243.15 reads as rewritten:

"§ 53-243.15. Filing required for exempt persons; civil penalty.

(a) All exempt persons described in G.S. ~~53-243.01(8)~~ 53-243.01(12) who are engaged in the mortgage brokerage or mortgage banking business on October 1, 2002, or who are engaged in the mortgage-servicing business on October 1, 2008, shall be required to file a form with the Commissioner on or before that date. All exempt

persons, who commence mortgage brokerage or mortgage banking business in this State after October 1, 2002, or who commence mortgage servicing in this State after October 1, 2008, shall file the form with the Commissioner upon commencement of the business. This form, prescribed by the Commissioner, shall contain all of the following information:

- (1) The name of the respective exempt person.
- (2) The basis of the exempt status of the exempt person.
- (3) The principal business address of the exempt person.
- (4) The State or federal regulatory authority responsible for the exempt person's supervision, examination, or regulation, if any.

(b) In addition to any other measures the exempt person may be subject to under this Article, failure by an exempt person to file the required form shall not affect the exempt status of the person. However, the exempt person shall be subject to a civil penalty set by the Commissioner that shall not exceed the sum of two hundred fifty dollars (\$250.00) for each year the form is not filed. No person required to file under this section may transact business in this State as a mortgage banker or mortgage broker or mortgage servicer unless the person has filed the prescribed form with the Commissioner in accordance with this section."

SECTION 13. G.S. 53-243.16(b) reads as rewritten:

"(b) In addition, if a person described in subsection (a) of this section is a corporation, partnership, limited liability company, association, or trust, the Department of Justice may provide a criminal history record check to the Commissioner for any person who has control of that person, or who is the ~~managing principal~~ qualifying individual or a branch manager of that person."

SECTION 14. G.S. 53-243.17(c) reads as rewritten:

"(c) Notwithstanding any other provision of this section, the Commissioner retains full authority and discretion under this Article to license mortgage brokers, mortgage bankers, mortgage servicers, loan officers, and limited loan officers and to enforce this Article to its fullest extent. Nothing in this section shall be deemed to be a reduction or derogation of that authority and discretion."

SECTION 15. G.S. 24-1.1E(a)(4a) reads as rewritten:

"(4a) 'Mortgage broker' is as defined in G.S. ~~53-243.01(14)~~. 53-243.01."

SECTION 16. G.S. 24-1.1F(a)(4) reads as rewritten:

"(4) Mortgage broker. – A mortgage broker as defined in G.S. ~~53-243.01(14)~~. 53-243.01."

SECTION 17. G.S. 66-106(b) reads as rewritten:

"(b) Except for mortgage loans as defined in G.S. ~~53-243.01(15)~~, 53-243.01, this Article shall not apply to any party approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, a National Mortgage Association or any federal agency; nor to any party currently designated and compensated by a North Carolina licensed insurance company as its agent to service loans it makes in this State; nor to any insurance company registered with and licensed by the North Carolina Insurance Commissioner; nor, with respect to residential mortgage loans, to any residential mortgage banker or

1 mortgage broker licensed pursuant to Article 19A of Chapter 53 of the General Statutes
2 or exempt from licensure pursuant to G.S. ~~53-243.01(8)~~53-243.01(12) and
3 G.S. 53-243.02; nor to any attorney-at-law, public accountant, or dealer registered under
4 the North Carolina Securities Act, acting in the professional capacity for which such
5 attorney-at-law, public accountant, or dealer is registered or licensed under the laws of
6 the State of North Carolina. Provided further that subdivision (1)(ii) above shall not
7 apply to any lender whose loans or advances to any person, firm or corporation in North
8 Carolina aggregate more than one million dollars (\$1,000,000) in the preceding calendar
9 year."

10 **SECTION 18.** Chapter 45 of the General Statutes is amended by adding a
11 new section to read:

12 **"§ 45-21.16B. Suspension of foreclosure proceedings.**

13 (a) The Clerk of Superior Court shall suspend foreclosure proceedings, including
14 any hearing or order for sale, for 60 days if notified by the Commissioner of Banks as
15 provided in G.S. 53-243.12(n). During the suspension period, all deadlines under this
16 Article are tolled.

17 (b) When a clerk enters a suspension order pursuant to subsection (a) of this
18 section prior to a hearing required under G.S. 45-21.16, upon completion of the 60-day
19 suspension period, the trustee or mortgagee may proceed with the hearing by providing
20 written notice to all parties of the new hearing date, not less than 10 days prior to the
21 hearing date.

22 (c) When a clerk enters a suspension order pursuant to subsection (a) of this
23 section, after entry of any authorization by the clerk pursuant to G.S. 45-21.16 and
24 before the expiration of the 10-day upset bid period, the trustee or mortgagee shall not
25 be required to comply with the provisions of G.S. 45-21.16, but shall advertise and hold
26 the sale in accordance with G.S. 45-21.16A, 45-21.17, and 45-21.17A."

27 **SECTION 19.** G.S. 45-91 reads as rewritten:

28 **"§ 45-91. (Effective April 1, 2008) Assessment of fees; processing of payments;**
29 **publication of statements.**

30 A servicer must comply as to every home loan, regardless of whether the loan is
31 considered in default or the borrower is in bankruptcy or the borrower has been in
32 bankruptcy, with the following requirements:

33 (1) Any fee that is incurred by a servicer shall be both:

34 a. Assessed within 45 days of the date on which the fee was
35 incurred. Provided, however, that attorney or trustee fees and
36 costs incurred as a result of a foreclosure action shall be
37 assessed within 45 days of the date they are charged by either
38 the attorney or trustee to the servicer.

39 b. Explained clearly and conspicuously in a statement mailed to
40 the borrower at the borrower's last known address at least 30
41 days after assessing the fee, provided the servicer shall not be
42 required to take any action in violation of the provisions of the
43 federal bankruptcy code.

(2) All amounts received by a servicer on a home loan at the address where the borrower has been instructed to make payments shall be accepted and credited, or treated as credited, within one business day of the date received, provided that the borrower has made the full contractual payment and has provided sufficient information to credit the account. If a servicer uses the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date shall be credited no later than the due date. Provided, however, that if any payment is received and not credited, or treated as credited, the borrower shall be notified within 10 business days by mail at the borrower's last known address of the disposition of the payment, the reason the payment was not credited, or treated as credited to the account, and any actions necessary by the borrower to make the loan current.

(3) Failure to charge the fee or provide the information within the allowable time and in the manner required under subdivision (1) of subsection (a) of this section constitutes a waiver of such fee.

(4) All fees charged by a servicer must be otherwise permitted under applicable law and the contracts between the parties. Nothing herein is intended to permit the application of payments or method of charging interest which is less protective of the borrower than the contracts between the parties and other applicable law.

(5) The obligations of mortgage servicers set forth in G.S. 53-243.11."

SECTION 20. G.S. 45-94 reads as rewritten:

"§ 45-94. (Effective April 1, 2008) Remedies.

In addition to any equitable remedies and any other remedies at law, any borrower injured by any violation of this Article may bring an action for recovery of actual damages, including reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a home loan may enforce the provisions of this section. The Clerk of Superior Court shall also suspend foreclosure proceedings for 60 days if notified by the Commissioner of Banks as provided in G.S. 53-243.12(n). With the exception of an action by the Commissioner of Banks or the Attorney General, at least 30 days before a borrower or a borrower's representative institutes a civil action for damages against a servicer for a violation of this Article, the borrower or a borrower's representative shall notify the servicer in writing of any claimed errors or disputes regarding the borrower's home loan that forms the basis of the civil action. The notice must be sent to the address as designated on any of the servicer's bills, statements, invoices, or other written communication, and must enable the servicer to identify the name and loan account of the borrower. For purposes of this section, notice shall not include a complaint or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action, or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be in violation of this Article if the servicer shows by a preponderance of evidence that:

(1) The violation was not intentional or the result of bad faith; and

1 (2) Within 30 days after discovering or being notified of an error, and
2 prior to the institution of any legal action by the borrower against the
3 servicer under this section, the servicer corrected the error and
4 compensated the borrower for any fees or charges incurred by the
5 borrower as a result of the violation."

6 **SECTION 21.** Sections 12 and 21 of this act become effective when it
7 becomes law. Subsection (n) of G.S. 53-243.12, as amended by Section 9, Section 18,
8 and Section 20 of this act, become effective January 1, 2009, and apply to foreclosure
9 proceedings filed on or after that date. The remainder of this act becomes effective
10 January 1, 2009, and applies to anyone engaged in the business of mortgage servicing
11 on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2487*

Committee Substitute Favorable 6/5/08

Third Edition Engrossed 6/19/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2487-PCS10485-SU-86

Short Title: Change Format of Drivers Licenses/Under 21.

(Public)

Sponsors:

Referred to:

May 26, 2008

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE FORMAT OF A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD BEING ISSUED TO A PERSON LESS THAN TWENTY-ONE YEARS OF AGE FROM A HORIZONTAL FORMAT TO A VERTICAL FORMAT TO MAKE RECOGNITION OF UNDERAGE PERSONS MORE EASY FOR CLERKS DEALING IN RESTRICTED AGE SALES OF PRODUCTS SUCH AS ALCOHOLIC BEVERAGES AND TOBACCO PRODUCTS AS RECOMMENDED BY THE CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

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

"(n) Format. – A drivers license issued by the Division must be tamperproof and must contain all of the following information:

- (1) An identification of this State as the issuer of the license.
- (2) The license holder's full name.
- (3) The license holder's residence address.
- (4) A color photograph of the license holder, taken by the Division.
- (5) A physical description of the license holder, including sex, height, eye color, and hair color.
- (6) The license holder's date of birth.
- (7) An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number.
- (8) Each class of motor vehicle the license holder is authorized to drive and any endorsements or restrictions that apply.
- (9) The license holder's signature.
- (10) The date the license was issued and the date the license expires.

1 The Commissioner may waive the requirement of a color photograph on a license if
2 the license holder proves to the satisfaction of the Commissioner that taking the
3 photograph would violate the license holder's religious convictions. In taking
4 photographs of license holders, the Division must distinguish between license holders
5 who are less than 21 years old and license holders who are at least 21 years old by using
6 different color backgrounds or borders for each group. The Division shall determine the
7 different colors to be used. The Commissioner shall ensure that applicants 21 years old
8 or older are issued drivers licenses and special identification cards that are printed in a
9 horizontal format. The Commissioner shall ensure that applicants under the age of 21
10 are issued drivers licenses and special identification cards that are printed in a vertical
11 format, that distinguishes them from the horizontal format, for ease of identification of
12 individuals under age 21 by members of industries that regulate controlled products that
13 are sale restricted by age and law enforcement officers enforcing these laws.

14 At the request of an applicant for a drivers license, a license issued to the applicant
15 must contain the applicant's race."

16 **SECTION 2.** The Office of State Controller, with the support of the Office
17 of State Budget and Management, shall identify and make all efforts to secure any
18 matching funds or other resources to assist in funding this initiative.

19 **SECTION 3.** This act becomes effective October 1, 2008, and applies to
20 drivers licenses and special identification cards issued or renewed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 2487*
Committee Substitute Favorable 6/5/08
Third Edition Engrossed 6/19/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H2487-PCS10485-SU-86

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Sponsors:

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13 are sale restricted by age and law enforcement officers enforcing these laws.

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VISITOR REGISTRATION SHEET

Name of Committee
Commerce, Small Business and Entrepreneurship

Date July 1, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Roz Sawitt	NECCE
CS Hollis	KL Dotes
W.D. Seggin	KL Dotes
Andy Ellen	NCRMA
R. Paul Wilms	NCHBA
Russ Dubinsky	IFRIC
Joe Stewart	IFRIC
Bucki Gray	John Locke Foundation

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Date July 1, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Selena Childs	CFTF
Mandy Ablesinger	Action for Children NC
Tom VITAGLIONE	CFTF
Chris Malauri	N.C. Beer & Wine Assoc
Susan Valauri	Nationwide
AL DEITICH	DOA/YAIO
Stephanie Nantz	DOA/YAIO
Thomas C. Caves, Jr.	NC Dept. of Crime Control & Public Safety
BZ/1 Chonell	NC CCPS/ALE
Cliff Venske	Gov's Office
W. Daniel Amburn	ElectriCities of NC, Inc.
Alice Garland	NCEL

VISITOR REGISTRATION SHEET

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Date July 1, 2008

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NAME

FIRM OR AGENCY AND ADDRESS

ROBERT ZIMMERS	NC DOA
<i>[Signature]</i>	NAME - Tom Harts
Dean Plunkett	NCBWWA
<i>[Signature]</i>	NCFPC
John Morris	NCFPC
PAUL RIBEIRO	NCFPC
Erin Mary Farrell	NCFPC
<i>[Signature]</i>	NCFPC

VISITOR REGISTRATION SHEET

Name of Committee
Commerce, Small Business and Entrepreneurship

Date July 1, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
GmTeague	NMRS
Dick Galt	atly.
Jon Carr	Jordan Price Law Firm
James Gheen	Intern for Senator Doug Berger
Tony Spence	DOT/DMV
Johanna Reese	DOT
Rob Schöfield	NC Policy Work
Bill Rowe	NC Justice Center
Michelle Frazier	MFS
Jennifer Johnson	C.R.L.
Evan Ngwet	CRL

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 3, 2008	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 2167	Towing of Recreational Boats/Exemption.	Representative Williams, III

Senator R. C. Soles, Jr., Chair

**Senate Commerce, Small Business and Entrepreneurship
Committee**

**Thursday, July 3, 2008, 9:00 AM
1027 LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB Towing of Recreational
2167 Boats/Exemption.

Representative
Williams, III

Presentations

Other Business

Adjournment

SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE
Thursday, July 3, 2008
Room 1027, Legislative Building

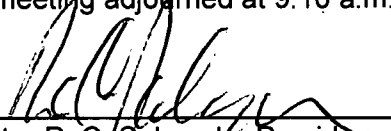
MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met at 9:00 a.m. on Thursday July 3, 2008, in Room 1027 of the Legislative Building. Fourteen members of the Committee were present. Senator R. C. Soles, Jr., Chairman, presided.


Senator Soles recognized the following pages assisting with today's meeting: Haylee McLean, Willow Springs, sponsored by Senator Blake; John Rosser, Raleigh, sponsored by Senator Hunt; Katy Searcy, Morganton, sponsored by Senator Jacumin; Kathryn Nelson, New Bern, sponsored by Senator Preston; Adam Craven, Hope Mills, sponsored by Senator Rand; and Josh Kramer, Whiteville, sponsored by Senator Soles.

Senator Soles stated that the first order of business would be to consider H. B. 2167, Towing of Recreational Boats/Exemption and recognized Representative Williams, sponsor of the bill, to explain the measure. Senator Apodaca offered Amendment No. 1 which was adopted. After a discussion of the bill, Senator Dalton moved for a favorable report of the bill, as amended. Motion carried.

The meeting adjourned at 9:10 a.m.



Senator R. C. Soles, Jr., Presiding



Mona Fitzgerald, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, July 03, 2008

Senator SOLES, 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) 2167	Towing of Recreational Boats/Exemption.
	Draft Number: PCS 10488
	Sequential Referral: Finance
	Recommended Referral: None
	Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comments:

PUBLIC BILL
ROLL CALL

Proposed Committee Substitute For
#3
S. 2167

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE WIDTH OF BOATS THAT MAY BE TRANSPORTED ON HIGHWAY ROUTES DURING THE DAY AND NIGHT WITHOUT A PERMIT AND TO PROVIDE FOR AN ANNUAL PERMIT AS OPPOSED TO A SINGLE TRIP PERMIT FOR OVERSIZE BOATS.

Introduced by Representative(s): *Williams*

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

The Committee on Finance
a majority being present having considered
the bill and recommend that it do pass.
Jebke, Gibson, Wainwright and Weiss
For the Committee

#3
FAVORABLE TO COMM. SUB
UNFAVORABLE TO BILL *#2*
C.S.

JUN 24 2008

AND PLACED ON
CALENDAR FOR

366
6-25-08

TITLE CHANGE

PASSED 2nd READING
Ayes 112 Noes 3

JUN 25 2008

AND PLACED ON THE
CALENDAR

PASSED 3rd READING
Ayes 102 Noes 10

JUN 26 2008

AND ORDERED ENROLLED
AND SENT TO SENATE

Special Message

RECEIVED

JUN 26 2008

From House of Representatives
By Clerk *SP* 1:01 AM

PASSED 1st READING

JUN 26 2008

AND REFERRED TO COMMITTEE
ON *Commerce, Small*

Bus. & Entrepreneurship
SEQUENTIAL REFERRAL:

Finance

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

4

HOUSE BILL 2167
Committee Substitute Favorable 6/9/08
Committee Substitute #2 Favorable 6/19/08
Committee Substitute #3 Favorable 6/24/08

Short Title: Towing of Recreational Boats/Exemption.

(Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE WIDTH OF BOATS THAT MAY BE
TRANSPORTED ON HIGHWAY ROUTES DURING THE DAY AND NIGHT
WITHOUT A PERMIT AND TO PROVIDE FOR AN ANNUAL PERMIT AS
OPPOSED TO A SINGLE TRIP PERMIT FOR OVERSIZE BOATS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-116 is amended by adding a new subsection to read:

"§ 20-116. Size of vehicles and loads.

...

(m) Notwithstanding subsection (a) of this section, a boat or boat trailer with an outside width of less than 120 inches may be towed without a permit. The towing of a boat or boat trailer less than 120 inches in width may take place on any day of the week, including weekends and holidays, and may take place at night. A boat or boat trailer in excess of 102 inches but less than 120 inches must be equipped with a minimum of two operable amber lamps on the widest point of the boat and the boat trailer such that the dimensions of the boat and the boat trailer are clearly marked and visible."

SECTION 2. G.S. 105-119(g) reads as rewritten:

"§ 20-119. Special permits for vehicles of excessive size or weight; fees.

...

(g) The Department of Transportation shall issue annual overwidth permits for the following: vehicles

(1) A vehicle carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that ~~do~~ does not exceed 14 feet in width. These permits shall be a permit issued under this subdivision is valid for unlimited movement without escorts on all State highways where the overwidth ~~vehicles do~~ vehicle does not exceed posted bridge and load limits.

(2) A boat or boat trailer whose outside width equals or exceeds 120 inches. A permit issued under this subdivision must restrict a vehicle's towing of the boat or boat trailer to daylight hours only."

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



HOUSE BILL 2167: Towing of Recreational Boats/Exemption

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship. If fav, re-ref to Finance	Date:	July 3, 2008
Introduced by:	Rep. Williams	Summary by:	Wendy Graf Ray
Version:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 2167 would allow a boat or boat trailer with a width greater than 102 inches but less than 120 inches to be towed without a permit and on weekends, holidays, and at night. It would also require that the boat be equipped with appropriate lighting. The bill would also authorize the Department of Transportation to issue an annual oversize permit for a boat or boat trailer whose outside width equals or exceeds 120 inches. The permit would restrict the towing of the boat or boat trailer to daylight hours only.

CURRENT LAW: Under general State law, the total outside width of a vehicle may not exceed 102 inches unless the statutes provide an exception to the width requirement for the vehicle or the operator of the vehicle receives a permit from the Department of Transportation to operate the vehicle on the highway. Currently, the Department issues oversize permits for boats and boat trailers that exceed 102 inches, but the permits limit towing to daylight hours and do not allow towing on weekends or holidays. Annual permits are issued for boats and boat trailers up to 12 feet wide, and anything wider would be issued a single trip permit. The cost of a single trip permit varies depending on the size and width of the vehicle. The cost for an annual permit is \$100.

BILL ANALYSIS: House Bill 2167 does two things:

- Section 1 would provide an exception to the 102-inch width restriction for boats and boat trailers that are less than 120 inches wide. It would allow a boat or boat trailer that is greater than 102 inches but less than 120 inches wide to be towed without a permit any day of the week and at night. The boat or trailer would have to be equipped with a minimum of two operable amber lamps on its widest point so that the dimensions are clearly marked and visible.
- Section 2 would authorize the Department of Transportation to issue an annual oversize permit to a boat or boat trailer with an outside width of 120 inches or more. The cost of the permit would be \$100. The permit would restrict the towing of a boat or boat trailer of that size to daylight hours only.

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

BACKGROUND: Senate Bill 1695 contains a similar provision but would also amend other statutory provisions relating to oversize and overweight vehicles.

Giles Perry, counsel to the House Transportation Committee, and Cindy Avrette, counsel to the House Finance Committee, contributed to this summary.

H2167e4-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2167

Committee Substitute Favorable 6/9/08

Committee Substitute #2 Favorable 6/19/08

Committee Substitute #3 Favorable 6/24/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2167-PCS10488-SU-88

Short Title: Towing of Recreational Boats/Exemption.

(Public)

Sponsors:

Referred to:

May 19, 2008

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE WIDTH OF BOATS THAT MAY BE
TRANSPORTED ON HIGHWAY ROUTES DURING THE DAY AND NIGHT
WITHOUT A PERMIT AND TO PROVIDE FOR AN ANNUAL PERMIT AS
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"§ 20-116. Size of vehicles and loads.

...

(m) Notwithstanding subsection (a) of this section, a boat or boat trailer with an outside width of less than 120 inches may be towed without a permit. The towing of a boat or boat trailer less than 120 inches in width may take place on any day of the week, including weekends and holidays, and may take place at night. A boat or boat trailer in excess of 102 inches but less than 120 inches must be equipped with a minimum of two operable amber lamps on the widest point of the boat and the boat trailer such that the dimensions of the boat and the boat trailer are clearly marked and visible."

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"§ 20-119. Special permits for vehicles of excessive size or weight; fees.

...

(g) The Department of Transportation shall issue annual overwidth permits for the following: vehicles

(1) A vehicle carrying agricultural equipment or machinery from the dealer to the farm or from the farm to the dealer that ~~do~~ does not exceed 14 feet in width. These permits shall be a permit issued under this subdivision is valid for unlimited movement without escorts on all

1 State highways where the overwidth ~~vehicles do~~ vehicle does not
2 exceed posted bridge and load limits.

3 (2) A boat or boat trailer whose outside width equals or exceeds 120
4 inches. A permit issued under this subdivision must restrict a vehicle's
5 towing of the boat or boat trailer to daylight hours only."

6 **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. 2167

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 7/3/08

Amendment No. 1

(to be filled in by
Principal Clerk)

Rep.) _____

Sen.) _____

1 moves to amend the bill on page 1, line 17

2 () WHICH CHANGES THE TITLE

3 by deleting "G.S. 105-119(g)" and

4 substituting "G.S. 20-119(g)"

5 _____

6 _____

7 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED 

ADOPTED  FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

VISITOR REGISTRATION SHEET

Name of Committee
SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Thursday
 July 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W. Daniel Amburn	Electricities of N.C., Inc.
Chris Dillm	Pro Tem
Joe McClees	McClees Co
Bill Rowe	NC Justice Center
J. Pienta	NCCA
VL McBride	NCA
Johanna Reese	DOT
Andy Ellen	NCRP
Elizabeth Dalton	NCRMA

VISITOR REGISTRATION SHEET

Name of Committee

**SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP**

Date

Thursday
July 3, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

JOHN GOODMAN

NC Chamber

Russ Dubishy

IFNC

Principal Clerk _____

Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Wednesday	July 9, 2008	9:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1134	Cleanup of Abandoned Manufactured Homes.	Representative Justice Representative Tolson Representative Allen Representative Haire
HB 2265	School Bus Exempt from Duplicate Inspection.	Representative Carney Representative Yongue Representative Cole Representative Allen
HB 2308	CDL/Federal Compliance.-AB	Representative Cole
HB 2314	Voluntary County Participation/DOT.-AB	Representative Cole
HB 2318	DOT/Partnership Agreements/Construction.-AB	Representative Cole
HB 2720	Energy-Efficient State Motor Vehicle Fleets.	Representative Thomas Representative Martin Representative Harrison

Senator R. C. Soles, Jr., Chair

**Senate Commerce, Small Business and Entrepreneurship
Committee**

**Wednesday, July 9, 2008, 9:00 AM
1027 LB**

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

HB 1134	Cleanup of Abandoned Manufactured Homes.	Representative Justice Representative Tolson Representative Allen Representative Haire
HB 2265	School Bus Exempt from Duplicate Inspection.	Representative Carney Representative Yongue Representative Cole Representative Allen Representative Cole
HB 2308	CDL/Federal Compliance.-AB	Representative Cole
HB 2314	Voluntary County Participation/DOT.-AB	Representative Cole
HB 2318	DOT/Partnership Agreements/Construction.-AB	Representative Cole
HB 2720	Energy-Efficient State Motor Vehicle Fleets.	Representative Thomas Representative Martin Representative Harrison

Presentations

Other Business

Adjournment

Senate Commerce, Small Business and Entrepreneurship Committee
Wednesday, July 9, 2008
Room 1027, Legislative Building

MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met on Wednesday, July 9, 2008, at 9:00 a.m. in Room 1027 of the Legislative Building. Nineteen members of the Committee were present. Senator Soles recognized the following Pages assisting with the meeting: Brian O'Bannon, Charlotte, sponsored by Senator Clodfelter; Sarah Miller and Lacy Nance, Rutherfordton, sponsored by Senator Dalton; Caitlin Truelove, Raleigh, sponsored by Senator Hunt; Suzie Choe, Fayetteville, sponsored by Senator Rand; and Kareem Shaw, Riegelwood, and Randi Simmons, Clarendon, sponsored by Senator Soles.

Senator Soles stated that the first order of business would be to consider H.B. 1134, Cleanup of Abandoned Manufactured Homes, sponsored by Representatives Justice, Tolsen, Allen, and Haire. Senator McKissick moved for adoption of the Senate Committee Substitute bill for discussion purposes. Representative Haire explained the bill, and after questions by members, Senator Malone moved for a favorable report of the Senate Committee substitute bill. Motion carried. The Committee recommended that the bill be re-referred to the Finance Committee.

The next order of business was H.B. 2720, Energy-Efficient State Motor Vehicle Fleets, sponsored by Representatives Thomas, Martin, and Harrison. Senator Shaw moved for adoption of the Senate Committee Substitute bill for discussion purposes. Representatives Thomas and Harrison explained the bill. After questions by members, Senator Soles recognized Mr. Bob Glaser, representing the North Carolina Automobile Dealers, who spoke in opposition to the bill regarding the requirement that the Department of Transportation acquire only new passenger motor vehicles that have a fuel economy that is in the top 15 percent of that class of comparable automobiles. Mr. Glaser stated that a 50 percent requirement would be a more reasonable percentage. Subsequently, Senator Forrester offered Amendment No. 1 to change the requirement to 50 percent. Senator Rand offered a substitute motion to withdraw the bill from the Commerce Committee and re-refer the bill to the Rules and Operation of the Senate Committee to be included in the study bill. Senator Forrester then withdrew Amendment No. 1.

After numerous questions and comments by members and staff and a consensus that the 50 percent requirement would satisfy the bill sponsors, Mr. Glaser, and the members, Senator Rand withdrew his motion and stated that the matter could still be included in the study bill. Senator Forrester then resubmitted Amendment No. 1 which was adopted. Senator Goss moved for a favorable report of the Senate Committee Substitute bill, as amended. Motion carried.

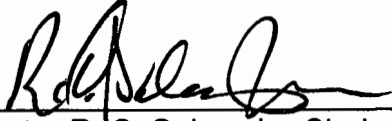
Senator Soles recognized Senator Apodaca for a motion to adopt the Senate Committee substitute bill for H.B. 2265, School Bus Exempt from Duplicate Inspection. Representative Carney was present to explain the bill. Senator Rand moved for a favorable report of the Senate Committee Substitution bill. Motion carried.

The next bill on the agenda was H.B. 2308, CDL/Federal Compliance-AB., sponsored by Representative Cole. Senator Rand moved for adoption of the Senate Committee Substitute bill for discussion purposes. After an explanation of the bill by Representative Cole, Senators Apodaca and Dorsett moved jointly for a favorable report of the Senate Committee Substitute bill. Motion carried.

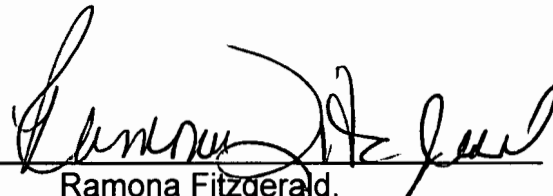
Senator Soles stated that the next order of business would be to consider H.B. 2314, Voluntary County Participation/DOT-AB. Senator Purcell moved for adoption of the Senate Committee substitute bill for discussion purposes. Representative Cole, the bill sponsor, was present to explain the bill. Senator Dorsett moved for a favorable report of the Senate Committee Substitute bill. Motion carried.

The last item on the agenda was H.B. 2318, DOT/Partnership Agreements Construction.-AB. Senator Soles recognized Senator Stevens for a motion to adopt the Senate Committee substitute bill. After an explanation of the bill by Representative Cole, Senator Soles recognized Senator Stevens who moved for a favorable report of the Senate Committee Substitute bill. Motion carried.

The meeting adjourned at 10:25 a.m.



Senator R. C. Soles, Jr., Chairman



Ramona Fitzgerald,
Committee Clerk

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Wednesday, July 09, 2008

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

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

H.B.	2308	CDL/Federal Compliance.-AB	
		Draft Number:	PCS51052
		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)	2265	School Bus Exempt from Duplicate Inspection.	
		Draft Number:	PCS70803
		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)	2318	DOT/Partnership Agreements/Construction.-AB	
		Draft Number:	PCS60548
		Sequential Referral:	None
		Recommended Referral:	None
		Long Title Amended:	No

TOTAL REPORTED: 3

Committee Clerk Comments:

2308

H.B.

H. 1699

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS LICENSES IN ORDER TO
COMPLY WITH FEDERAL LAW, AS RECOMMENDED BY THE JOINT LEGISLATIVE
TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Representative(s): Cole.

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

PASSED 1st READING

MAY 21 2008

AND REFERRED TO COMMITTEE

ON Transportation

to Committee on Transportation
majority being present, having considered
is bill, recommend that it do pass.

Rep. Carney
For the Committee

REPORTED FAVORABLY MAY 28 2008.

PURSUANT TO RULE 36(b)

MAY 28 2008

PLACED ON CALENDAR
OF 5-29-08

III-3 EV VV
PASSED 2nd & 3rd
READING

MAY 29 2008

ORDERED SENT TO SENATE

Senise Weeks

RECEIVED

MAY 30 2008

From House of Representatives
By Clerk JS 8:30 AM/PM

PASSED 1st READING

JUN 3 2008

AND REFERRED TO COMMITTEE

ON Commerce, Trade

Bus & Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

1

HOUSE BILL 2308*

Short Title: CDL/Federal Compliance.-AB

(Public)

Sponsors: Representatives Cole; Boylan and Faison.

Referred to: Transportation.

May 21, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS
3 LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW, AS
4 RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION
5 OVERSIGHT COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 20-17.4 reads as rewritten:

8 "§ 20-17.4. **Disqualification to drive a commercial motor vehicle.**

9 (a) One Year. – Any of the following disqualifies a person from driving a
10 commercial motor vehicle for one year if committed by a person holding a commercial
11 drivers license, or, when applicable, committed while operating a commercial motor
12 vehicle by a person who does not hold a commercial drivers license:

13 (1) A first conviction of G.S. 20-138.1, driving while impaired, for a
14 holder of a commercial drivers license that occurred while the person
15 was driving a motor vehicle that is not a commercial motor vehicle.

16 (2) A first conviction of G.S. 20-138.2, driving a commercial motor
17 vehicle while impaired.

18 (3) A first conviction of G.S. 20-166, hit and run.

19 (4) A first conviction of a felony in the commission of which a
20 commercial motor vehicle was used or the first conviction of a felony
21 in which any motor vehicle is used by a holder of a commercial drivers
22 license.

23 (5) Refusal to submit to a chemical test when charged with an
24 implied-consent offense, as defined in G.S. 20-16.2.

25 (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d),
26 of driving a commercial motor vehicle after consuming alcohol under
27 G.S. 20-138.2A.

28 (7) A civil license revocation under G.S. 20-16.5, or a substantially similar
29 revocation obtained in another jurisdiction, arising out of a charge that

1 occurred while the person was either operating a commercial motor
2 ~~vehicle.~~ vehicle or while the person was holding a commercial drivers
3 license.

4 (8) A first conviction of vehicular homicide under G.S. 20-141.4 or
5 vehicular manslaughter under G.S. 14-18 occurring while the person
6 was operating a commercial motor vehicle.

7 (9) Driving a commercial motor vehicle during a period when the person's
8 commercial drivers license is revoked, suspended, cancelled, or the
9 driver is otherwise disqualified from operating a commercial motor
10 vehicle.

11 (a1) Ten-Day Disqualification. – A person who is convicted for a first offense of
12 driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is
13 disqualified from driving a commercial motor vehicle for 10 days.

14 (b) Modified Life. – A person who has been disqualified from driving a
15 commercial motor vehicle for a conviction or refusal described in subsection (a) who, as
16 the result of a separate incident, is subsequently convicted of an offense or commits an
17 act requiring disqualification under subsection (a) is disqualified for life. The Division
18 may adopt guidelines, including conditions, under which a disqualification for life under
19 this subsection may be reduced to 10 years.

20 (b1) Life Without Reduction. – A person is disqualified from driving a
21 commercial motor vehicle for life, without the possibility of reinstatement after 10
22 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a
23 fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a
24 chemical test a third time when charged with an implied-consent offense, as defined in
25 G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

26 (c) ~~Life.~~ Life Without Reduction. – A person is disqualified from driving a
27 commercial motor vehicle for life if that person either uses a commercial motor vehicle
28 in the commission of any felony involving the manufacture, distribution, or dispensing
29 of a controlled substance, or possession with intent to manufacture, distribute, or
30 dispense a controlled ~~substance.~~ substance or is the holder of a commercial drivers
31 license at the time of the commission of any such felony.

32 (d) Less Than a Year. – A person is disqualified from driving a commercial
33 motor vehicle for 60 days if that person is convicted of two serious traffic violations, or
34 120 days if convicted of three or more serious traffic violations, arising from separate
35 incidents occurring within a three-year period, committed in a commercial motor
36 vehicle or while holding a commercial drivers license. ~~arising from separate incidents~~
37 ~~occurring within a three-year period.~~ This disqualification shall be in addition to, and
38 shall be served at the end of, any other prior disqualification. For purposes of this
39 subsection, a "serious violation" includes violations of G.S. 20-140(f) and
40 G.S. 20-141(j3).

41 (e) Three Years. – A person is disqualified from driving a commercial motor
42 vehicle for three years if that person is convicted of an offense or commits an act
43 requiring disqualification under subsection (a) and the offense or act occurred while the

1 person was transporting a hazardous material that required the motor vehicle driven to
2 be placarded.

3 (f) Revocation Period. – A person is disqualified from driving a commercial
4 motor vehicle for the period during which the person's regular or commercial drivers
5 license is revoked, suspended, or cancelled.

6 (g) Violation of Out-of-Service Order. – Any person convicted for violating an
7 out-of-service order, except as described in subsection (h) of this section, shall be
8 disqualified as follows:

9 (1) A person is disqualified from driving a commercial vehicle for a
10 period of 90 days if convicted of a first violation of an out-of-service
11 order.

12 (2) A person is disqualified for a period of one year if convicted of a
13 second violation of an out-of-service order during any 10-year period,
14 arising from separate incidents.

15 (3) A person is disqualified for a period of three years if convicted of a
16 third or subsequent violation of an out-of-service order during any
17 10-year period, arising from separate incidents.

18 (h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and
19 Passenger Offenses. – Any person convicted for violating an out-of-service order while
20 transporting hazardous materials or while operating a commercial vehicle designed or
21 used to transport more than 15 passengers, including the driver, shall be disqualified as
22 follows:

23 (1) A person is disqualified for a period of 180 days if convicted of a first
24 violation of an out-of-service order.

25 (2) A person is disqualified for a period of three years if convicted of a
26 second or subsequent violation of an out-of-service order during any
27 10-year period, arising from separate incidents.

28 (i) Disqualification for Out-of-State Violations. – The Division shall withdraw
29 the privilege to operate a commercial vehicle of any resident of this State or person
30 transferring to this State upon receiving notice of the person's conviction or
31 Administrative Per Se Notice in another state for an offense that, if committed in this
32 State, would be grounds for disqualification, even if the offense occurred in another
33 jurisdiction prior to being licensed in this State where no action had been taken at that
34 time in the other jurisdiction. The period of disqualification shall be the same as if the
35 offense occurred in this State.

36 (j) Disqualification of Persons Without Commercial Drivers Licenses. – Any
37 person convicted of an offense that requires disqualification under this section, but who
38 does not hold a commercial drivers license, shall be disqualified from operating a
39 commercial vehicle in the same manner as if the person held a valid commercial drivers
40 license.

41 (k) Disqualification for Railroad Grade Crossing Offenses. – Any person
42 convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is
43 operating a commercial motor vehicle, shall be disqualified from driving a commercial
44 motor vehicle as follows:

- 1 (1) A person is disqualified for a period of 60 days if convicted of a first
2 violation of a railroad grade crossing offense listed in this subsection.
3 (2) A person is disqualified for a period of 120 days if convicted during
4 any three-year period of a second violation of any combination of
5 railroad grade crossing offenses listed in this subsection.
6 (3) A person is disqualified for a period of one year if convicted during
7 any three-year period of a third or subsequent violation of any
8 combination of railroad grade crossing offenses listed in this
9 subsection.

10 (l) Disqualification Based on Testing Positive in a Drug or Alcohol Test. –
11 Upon receipt of notice of a positive drug or alcohol test, or of refusal to participate in a
12 drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division must disqualify a CDL
13 holder from operating a commercial motor vehicle for a minimum of 30 days and until
14 receipt of proof of successful completion of assessment and treatment by a substance
15 abuse professional in accordance with 49 C.F.R. § 382.503.

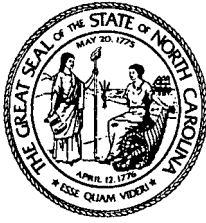
16 (m) Disqualifications of Drivers Who Are Determined to Constitute an Imminent
17 Hazard. – The Division shall withdraw the privilege to operate a commercial motor
18 vehicle for any resident of this State for a period of 30 days in accordance with 49
19 C.F.R. § 383.52."

20 **SECTION 2.** G.S. 20-37.20A reads as rewritten:

21 **"§ 20-37.20A. Driving record notation for testing positive in a drug or alcohol test.**

22 Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol
23 or drug test of a person holding a commercial drivers license, and subject to any appeal
24 of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on
25 the driving record of the driver. A notation of a disqualification pursuant to
26 G.S. 20-17.4(l) shall be retained on the record of a person for a period of ~~two~~ three years
27 following the end of any disqualification of that person."

28 **SECTION 3.** This act becomes effective December 1, 2008, and applies to
29 offenses committed on or after that date.



HOUSE BILL 2308: CDL/Federal Compliance.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2008
Introduced by:	Rep. Cole	Summary by:	Wendy Graf Ray
Version:	PCS to First Edition H2308-CSSU-91[v.1]		Committee Counsel

SUMMARY: *The PCS for House Bill 2308 would amend the laws governing commercial drivers licenses in order to comply with federal requirements, as recommended by the Joint Legislative Transportation Oversight Committee.*

[As introduced, this bill was identical to S1699, as introduced by Sen. Jenkins, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

BILL ANALYSIS: The PCS for House Bill 2308 would make the following changes to the State's commercial motor vehicle licensing law:

- A person would be disqualified from driving a commercial motor vehicle for a year if the person is subject to a civil revocation for an implied consent offense that occurred while the person held a commercial drivers license (the person would not have to be operating a commercial motor vehicle when the offense occurs).
- A person would be disqualified for life from driving a commercial motor vehicle if the person commits a felony involving manufacture, distribution, or dispensing of a controlled substance while the person holds a commercial drivers license (the person would not have to use a commercial motor vehicle in the commission of the offense).
- A person would be disqualified from driving a commercial motor vehicle for 60 days for conviction of two serious traffic violations, or 120 days for conviction of three serious traffic violations, arising from separate incidents within a three-year period, while the person holds a commercial drivers license (the person would not have to be operating a commercial motor vehicle when the offenses occur).
- A positive or refused drug or alcohol test would result in at least a 30 day disqualification from driving a commercial motor vehicle. Currently, the CDL holder is disqualified only until they provide proof of successful completion of assessment and treatment by a substance abuse professional.
- A driving record notation for a positive alcohol or drug test would remain on the person's driving record for three years. Currently, the notation remains for two years.

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

Giles Perry, counsel to the House Transportation Committee, contributed to this summary.

H2308e1-SMSU-CSSU-91v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2308*

PROPOSED SENATE COMMITTEE SUBSTITUTE H2308-CSSU-91 [v.1]

7/8/2008 6:17:51 PM

Short Title: CDL/Federal Compliance.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS
LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW, AS
RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION
OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-17.4 reads as rewritten:

"§ 20-17.4. Disqualification to drive a commercial motor vehicle.

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

- (1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.
- (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
- (3) A first conviction of G.S. 20-166, hit and run.
- (4) A first conviction of a felony in the commission of which a commercial motor vehicle was used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.
- (5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2.
- (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

- (7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was either operating a commercial motor vehicle or while the person was holding a commercial drivers license.
- (8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.
- (9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person either uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance or is the holder of a commercial drivers license at the time of the commission of any such felony.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, arising from separate incidents occurring within a three-year period, committed in a commercial motor vehicle or while holding a commercial drivers license. ~~arising from separate incidents occurring within a three-year period.~~ This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act

1 requiring disqualification under subsection (a) and the offense or act occurred while the
2 person was transporting a hazardous material that required the motor vehicle driven to
3 be placarded.

4 (f) Revocation Period. – A person is disqualified from driving a commercial
5 motor vehicle for the period during which the person's regular or commercial drivers
6 license is revoked, suspended, or cancelled.

7 (g) Violation of Out-of-Service Order. – Any person convicted for violating an
8 out-of-service order, except as described in subsection (h) of this section, shall be
9 disqualified as follows:

10 (1) A person is disqualified from driving a commercial vehicle for a
11 period of 90 days if convicted of a first violation of an out-of-service
12 order.

13 (2) A person is disqualified for a period of one year if convicted of a
14 second violation of an out-of-service order during any 10-year period,
15 arising from separate incidents.

16 (3) A person is disqualified for a period of three years if convicted of a
17 third or subsequent violation of an out-of-service order during any
18 10-year period, arising from separate incidents.

19 (h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and
20 Passenger Offenses. – Any person convicted for violating an out-of-service order while
21 transporting hazardous materials or while operating a commercial vehicle designed or
22 used to transport more than 15 passengers, including the driver, shall be disqualified as
23 follows:

24 (1) A person is disqualified for a period of 180 days if convicted of a first
25 violation of an out-of-service order.

26 (2) A person is disqualified for a period of three years if convicted of a
27 second or subsequent violation of an out-of-service order during any
28 10-year period, arising from separate incidents.

29 (i) Disqualification for Out-of-State Violations. – The Division shall withdraw
30 the privilege to operate a commercial vehicle of any resident of this State or person
31 transferring to this State upon receiving notice of the person's conviction or
32 Administrative Per Se Notice in another state for an offense that, if committed in this
33 State, would be grounds for disqualification, even if the offense occurred in another
34 jurisdiction prior to being licensed in this State where no action had been taken at that
35 time in the other jurisdiction. The period of disqualification shall be the same as if the
36 offense occurred in this State.

37 (j) Disqualification of Persons Without Commercial Drivers Licenses. – Any
38 person convicted of an offense that requires disqualification under this section, but who
39 does not hold a commercial drivers license, shall be disqualified from operating a
40 commercial vehicle in the same manner as if the person held a valid commercial drivers
41 license.

42 (k) Disqualification for Railroad Grade Crossing Offenses. – Any person
43 convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is

operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

- (1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.
- (2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.
- (3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(l) ~~Disqualification Based on for Testing Positive in a Drug or Alcohol Test.~~ – Upon receipt of notice of a positive drug or alcohol test, or of refusal to participate in a drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division must disqualify a CDL holder from operating a commercial motor vehicle for a minimum of 30 days and until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503.

(m) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 2. G.S. 20-37.20A reads as rewritten:

"§ 20-37.20A. Driving record notation for testing positive in a drug or alcohol test.

Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol or drug test of a person holding a commercial drivers license, and subject to any appeal of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on the driving record of the driver. A notation of a disqualification pursuant to G.S. 20-17.4(l) shall be retained on the record of a person for a period of ~~two~~ three years following the end of any disqualification of that person."

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

H

D

HOUSE BILL 2308*
PROPOSED SENATE COMMITTEE SUBSTITUTE H2308-PCS51052-SU-91

Short Title: CDL/Federal Compliance.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS GOVERNING COMMERCIAL DRIVERS
LICENSES IN ORDER TO COMPLY WITH FEDERAL LAW, AS
RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION
OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-17.4 reads as rewritten:

"§ 20-17.4. Disqualification to drive a commercial motor vehicle.

(a) One Year. – Any of the following disqualifies a person from driving a commercial motor vehicle for one year if committed by a person holding a commercial drivers license, or, when applicable, committed while operating a commercial motor vehicle by a person who does not hold a commercial drivers license:

- (1) A first conviction of G.S. 20-138.1, driving while impaired, for a holder of a commercial drivers license that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle.
- (2) A first conviction of G.S. 20-138.2, driving a commercial motor vehicle while impaired.
- (3) A first conviction of G.S. 20-166, hit and run.
- (4) A first conviction of a felony in the commission of which a commercial motor vehicle was used or the first conviction of a felony in which any motor vehicle is used by a holder of a commercial drivers license.
- (5) Refusal to submit to a chemical test when charged with an implied-consent offense, as defined in G.S. 20-16.2.
- (6) A second or subsequent conviction, as defined in G.S. 20-138.2A(d), of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A.

(7) A civil license revocation under G.S. 20-16.5, or a substantially similar revocation obtained in another jurisdiction, arising out of a charge that occurred while the person was either operating a commercial motor vehicle or while the person was holding a commercial drivers license.

(8) A first conviction of vehicular homicide under G.S. 20-141.4 or vehicular manslaughter under G.S. 14-18 occurring while the person was operating a commercial motor vehicle.

(9) Driving a commercial motor vehicle during a period when the person's commercial drivers license is revoked, suspended, cancelled, or the driver is otherwise disqualified from operating a commercial motor vehicle.

(a1) Ten-Day Disqualification. – A person who is convicted for a first offense of driving a commercial motor vehicle after consuming alcohol under G.S. 20-138.2A is disqualified from driving a commercial motor vehicle for 10 days.

(b) Modified Life. – A person who has been disqualified from driving a commercial motor vehicle for a conviction or refusal described in subsection (a) who, as the result of a separate incident, is subsequently convicted of an offense or commits an act requiring disqualification under subsection (a) is disqualified for life. The Division may adopt guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to 10 years.

(b1) Life Without Reduction. – A person is disqualified from driving a commercial motor vehicle for life, without the possibility of reinstatement after 10 years, if that person is convicted of a third or subsequent violation of G.S. 20-138.2, a fourth or subsequent violation of G.S. 20-138.2A, or if the person refuses to submit to a chemical test a third time when charged with an implied-consent offense, as defined in G.S. 20-16.2, that occurred while the person was driving a commercial motor vehicle.

(c) Life. – A person is disqualified from driving a commercial motor vehicle for life if that person either uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance or is the holder of a commercial drivers license at the time of the commission of any such felony.

(d) Less Than a Year. – A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, arising from separate incidents occurring within a three-year period, committed in a commercial motor vehicle or while holding a commercial drivers license, arising from separate incidents occurring within a three-year period. This disqualification shall be in addition to, and shall be served at the end of, any other prior disqualification. For purposes of this subsection, a "serious violation" includes violations of G.S. 20-140(f) and G.S. 20-141(j3).

(e) Three Years. – A person is disqualified from driving a commercial motor vehicle for three years if that person is convicted of an offense or commits an act

1 requiring disqualification under subsection (a) and the offense or act occurred while the
2 person was transporting a hazardous material that required the motor vehicle driven to
3 be placarded.

4 (f) Revocation Period. – A person is disqualified from driving a commercial
5 motor vehicle for the period during which the person's regular or commercial drivers
6 license is revoked, suspended, or cancelled.

7 (g) Violation of Out-of-Service Order. – Any person convicted for violating an
8 out-of-service order, except as described in subsection (h) of this section, shall be
9 disqualified as follows:

10 (1) A person is disqualified from driving a commercial vehicle for a
11 period of 90 days if convicted of a first violation of an out-of-service
12 order.

13 (2) A person is disqualified for a period of one year if convicted of a
14 second violation of an out-of-service order during any 10-year period,
15 arising from separate incidents.

16 (3) A person is disqualified for a period of three years if convicted of a
17 third or subsequent violation of an out-of-service order during any
18 10-year period, arising from separate incidents.

19 (h) Violation of Out-of-Service Order; Special Rule for Hazardous Materials and
20 Passenger Offenses. – Any person convicted for violating an out-of-service order while
21 transporting hazardous materials or while operating a commercial vehicle designed or
22 used to transport more than 15 passengers, including the driver, shall be disqualified as
23 follows:

24 (1) A person is disqualified for a period of 180 days if convicted of a first
25 violation of an out-of-service order.

26 (2) A person is disqualified for a period of three years if convicted of a
27 second or subsequent violation of an out-of-service order during any
28 10-year period, arising from separate incidents.

29 (i) Disqualification for Out-of-State Violations. – The Division shall withdraw
30 the privilege to operate a commercial vehicle of any resident of this State or person
31 transferring to this State upon receiving notice of the person's conviction or
32 Administrative Per Se Notice in another state for an offense that, if committed in this
33 State, would be grounds for disqualification, even if the offense occurred in another
34 jurisdiction prior to being licensed in this State where no action had been taken at that
35 time in the other jurisdiction. The period of disqualification shall be the same as if the
36 offense occurred in this State.

37 (j) Disqualification of Persons Without Commercial Drivers Licenses. – Any
38 person convicted of an offense that requires disqualification under this section, but who
39 does not hold a commercial drivers license, shall be disqualified from operating a
40 commercial vehicle in the same manner as if the person held a valid commercial drivers
41 license.

42 (k) Disqualification for Railroad Grade Crossing Offenses. – Any person
43 convicted of a violation of G.S. 20-142.1 through G.S. 20-142.5, when the driver is

operating a commercial motor vehicle, shall be disqualified from driving a commercial motor vehicle as follows:

- (1) A person is disqualified for a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in this subsection.
- (2) A person is disqualified for a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in this subsection.
- (3) A person is disqualified for a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in this subsection.

(l) Disqualification Based on for Testing Positive in a Drug or Alcohol Test. – Upon receipt of notice of a positive drug or alcohol test, or of refusal to participate in a drug or alcohol test, pursuant to G.S. 20-37.19(c), the Division must disqualify a CDL holder from operating a commercial motor vehicle for a minimum of 30 days and until receipt of proof of successful completion of assessment and treatment by a substance abuse professional in accordance with 49 C.F.R. § 382.503.

(m) Disqualifications of Drivers Who Are Determined to Constitute an Imminent Hazard. – The Division shall withdraw the privilege to operate a commercial motor vehicle for any resident of this State for a period of 30 days in accordance with 49 C.F.R. § 383.52."

SECTION 2. G.S. 20-37.20A reads as rewritten:

"§ 20-37.20A. Driving record notation for testing positive in a drug or alcohol test.

Upon receipt of notice pursuant to G.S. 20-37.19(c) of positive result in an alcohol or drug test of a person holding a commercial drivers license, and subject to any appeal of the disqualification pursuant to G.S. 20-37.20B, the Division shall place a notation on the driving record of the driver. A notation of a disqualification pursuant to G.S. 20-17.4(l) shall be retained on the record of a person for a period of ~~two~~ three years following the end of any disqualification of that person."

SECTION 3. This act becomes effective December 1, 2008, and applies to offenses committed on or after that date.

A BILL TO BE ENTITLED

AN ACT TO EXEMPT BUSES FROM SAFETY INSPECTIONS REQUIRED UNDER MOTOR VEHICLE LAWS IF THEY ARE TITLED TO A LOCAL BOARD OF EDUCATION AND SUBJECT TO SCHOOL BUS INSPECTION REQUIREMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Representative(s): *Carney, Cole, Allen, Longenecker, Longenecker*

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

The Committee on Education
a majority being present, having considered
this bill, recommend that it do ☒ pass.

Rep. Bell & Lucas

For the Committee

☒ FAVORABLE TO COMM. SUB.
☐ UNFAVORABLE TO BILL

JUN 25 2008

ALL ☒ ON
CALENDAR FOR

TITLE CHANGE

re-referred to

Jud III

The Committee on *Judiciary III*
a majority being present, having considered
this bill, recommend that it do ☒ pass.

Rep. Sutton

For the Committee

REPORTED FAVORABLY JUL 01 2008

PURSUANT TO RULE 36(b)

JUL 1 2008

PLACED ON CALENDAR
OF 7-2-08

PASSES 2nd READING

116-0 ON
(ap)
JUL 2 2008

AND PLACED ON THE
CALENDAR

PASSED 3rd READING

✓ ✓
JUL 02 2008

ORDERED SENT TO SENATE

Special Message

Denise Weeks

RECEIVED

JUL 2 2008

From House of Representatives
By Clerk *LLB 16 AM/PM*

PASSED 1st READING

JUL 3 - 2008

AND REFERRED TO COMMITTEE
ON *Commerce, Small*

Bus & Entrepreneurship

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 2265
Committee Substitute Favorable 6/25/08

Short Title: School Bus Exempt from Duplicate Inspection.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXEMPT BUSES FROM SAFETY INSPECTIONS REQUIRED UNDER MOTOR VEHICLE LAWS IF THEY ARE TITLED TO A LOCAL BOARD OF EDUCATION AND SUBJECT TO SCHOOL BUS INSPECTION REQUIREMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

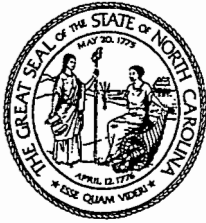
SECTION 1. G.S. 20-183.2(a1) reads as rewritten:

"(a1) ~~Safety Inspection Exemption~~Exceptions. – ~~Historic vehicles, as defined in G.S. 20-79.4(b)(55)~~The following vehicles shall not be subject to a safety inspection pursuant to this ~~Article~~Article:

(1) Historic vehicles, as defined in G.S. 20-79.4(b)(55).

(2) Buses titled to a local board of education and subject to the school bus inspection requirements specified by the State Board of Education and G.S. 115C-248(a)."

SECTION 2. This act becomes effective July 1, 2008.



HOUSE BILL 2265: School Bus Exempt from Duplicate Inspection

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2008
Introduced by:	Reps. Carney, Cole, Allen, Yongue	Summary by:	Wendy Graf Ray
Version:	PCS to Second Edition H2265-CSSU-90[v.1]		Committee Counsel

SUMMARY: *The PCS for House Bill 2265 would exempt school buses that are titled to a local board of education and that are subject to inspection requirements adopted by the State of Board of Education from annual safety inspections required by the motor vehicle laws. The bill is a recommendation of the Joint Legislative Transportation Oversight Committee.*

CURRENT LAW: Each local board of education is authorized to acquire, own, lease, contract and operate school buses to transport pupils enrolled in the public schools of that local school administrative unit. G.S. 115-239.

The superintendent of each local school administrative unit is required to have each school bus owned or operated by that local school administrative unit inspected at least once every 30 days during the school year. The inspection is for mechanical defects or other defects that may affect the safe operation of the bus. A report of the inspection, together with recommendations of the inspector, shall be filed in the superintendent's office and copy forwarded to the principal of the school where the bus is assigned. G.S. 115C-248(a).

It is the duty of each school bus driver to promptly report to the principal any mechanical defect or other defect which may affect the safe operation of the bus. The principal is required to report the defect to the superintendent and the superintendent shall cause the defect to be corrected promptly. G.S. 115C-248(b).

If the principal or superintendent finds that any bus is so defective that it may not be operated with reasonable safety then it is the duty of the principal or superintendent to cause use of the bus to be discontinued until the defect is remedied. G.S. 115-248(c).

In addition to the inspections required by G.S. 115C-248(a), school buses are also currently required to pass an annual safety inspection in accordance with Part 2 of Article 3A (Safety and Emissions Inspection Program) of Chapter 20 of the North Carolina General Statutes.

BILL SUMMARY: The PCS for House Bill 2265 would exempt school buses titled to a local board of education and subject to the school bus inspection requirements of Chapter 115C from the requirement for a Chapter 20 safety inspection.

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

Giles Perry, counsel to the House Judiciary III Committee, substantially contributed to this summary.

H2265e2-SMSU-CSSU-90v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2265

Committee Substitute Favorable 6/25/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2265-CSSU-90 [v.1]

7/8/2008 6:01:25 PM

Short Title: School Bus Exempt from Duplicate Inspection.

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO EXEMPT BUSES FROM SAFETY INSPECTIONS REQUIRED
UNDER MOTOR VEHICLE LAWS IF THEY ARE TITLED TO A LOCAL
BOARD OF EDUCATION AND SUBJECT TO SCHOOL BUS INSPECTION
REQUIREMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-183.2(a1) reads as rewritten:

"(a1) ~~Safety Inspection Exception.~~ Exceptions. – ~~Historic vehicles, as defined in~~
~~G.S. 20-79.4(b)(55).~~ The following vehicles shall not be subject to a safety inspection
pursuant to this ~~Article.~~ Article:

(1) Historic vehicles, as defined in G.S. 20-79.4(b)(55).

(2) Buses titled to a local board of education and subject to the school bus
inspection requirements specified by the State Board of Education and
G.S. 115C-248(a)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 2265
Committee Substitute Favorable 6/25/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H2265-PCS70803-SU-90

Short Title: School Bus Exempt from Duplicate Inspection.

(Public)

Sponsors:

Referred to:

May 21, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO EXEMPT BUSES FROM SAFETY INSPECTIONS REQUIRED
3 UNDER MOTOR VEHICLE LAWS IF THEY ARE TITLED TO A LOCAL
4 BOARD OF EDUCATION AND SUBJECT TO SCHOOL BUS INSPECTION
5 REQUIREMENTS, AS RECOMMENDED BY THE JOINT LEGISLATIVE
6 TRANSPORTATION OVERSIGHT COMMITTEE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 20-183.2(a1) reads as rewritten:

9 "(a1) ~~Safety Inspection Exception.~~Exceptions. – ~~Historic vehicles, as defined in~~
10 ~~G.S. 20-79.4(b)(55).~~The following vehicles shall not be subject to a safety inspection
11 pursuant to this ~~Article.~~Article:

- 12 (1) Historic vehicles, as defined in G.S. 20-79.4(b)(55).
13 (2) Buses titled to a local board of education and subject to the school bus
14 inspection requirements specified by the State Board of Education and
15 G.S. 115C-248(a)."

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

PUBLIC BILL

Proposed Committee Substitute For
H.B. 2318

SESSION LAW _____

ID=SB 1784

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO PRIVATE PARTNERSHIP AGREEMENTS FOR CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Representative(s): Cole

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

Committee on Transportation
majority being present, having considered
bill, recommend that it do ☒ pass.

Becky Carnoy
For the Committee

FAVORABLE TO COMM. SUB
UNFAVORABLE TO BILL

JUN 5 2008

866 AND PLACED ON
CALENDAR FOR
6-10-08

PASSES 2nd READING
106-8 EV
JUN 10 2008
AND PLACED ON THE
CALENDAR

On motion of Rep. Cole
POSTPONED
UNTIL 6-12-08

Cole
AMENDMENT NO. 1 JUN 12 2008
ADOPTED
109-3 EV
Hurley
AMENDMENT NO. 2 JUN 12 2008
FAILED
35-77 EV

Passed 3rd Reading
95-17 EV
(adj)
JUN 12 2008
AND ORDERED ENGROSSED
AND SENT TO SENATE

Devin Weeks

RECEIVED
JUN 13 2008

From House of Representatives
By Clerk 7:52 AM PM

PASSED 1st READING
JUN 16 2008

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

3

HOUSE BILL 2318*

Committee Substitute Favorable 6/5/08

Third Edition Engrossed 6/12/08

Short Title: DOT/Partnership Agreements/Construction.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO PRIVATE PARTNERSHIP AGREEMENTS FOR CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, AS RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(39) reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

...

(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, and to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges and existing rail in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of Transportation of any proposed agreement under this subdivision. Any contracts for construction of highways, roads, streets, and bridges which are awarded pursuant to an agreement

1 entered into under this section shall comply with the competitive
2 bidding requirements of Article 2 of this Chapter."

3 **SECTION 2.** G.S. 136-28.6 reads as rewritten:

4 "**§ 136-28.6. ~~Private contract participation~~ Participation by the Department of**
5 **~~Transportation.~~ Transportation with private developers.**

6 (a) The Department of Transportation may participate in private engineering and
7 construction contracts for State highways.

8 (b) In order to qualify for State participation, the project must be:

9 (1) The construction of a street or highway on the Transportation
10 Improvement Plan adopted by the Department of Transportation; or

11 (2) The construction of a street or highway on a mutually adopted
12 transportation plan that is designated a Department of Transportation
13 responsibility.

14 (c) Only those projects in which ~~the developer furnishes~~ the right-of-way is
15 furnished without cost to the Department of Transportation are eligible.

16 (d) The Department's participation shall be limited to fifty percent (50%) of the
17 amount of any engineering contract and/or any construction contract let ~~by the~~
18 ~~developer~~ for the project.

19 (e) ~~Participation~~ Department of Transportation participation in the contracts shall
20 be limited to cost associated with normal practices of the Department of Transportation.

21 (f) Plans for the project must meet Department of Transportation standards and
22 shall be approved by the Department of Transportation.

23 (g) Projects shall be constructed in accordance with the plans and specifications
24 approved by the Department of Transportation.

25 (h) The Secretary shall report in writing, on a quarterly basis, to the Joint
26 Legislative Commission on Governmental Operations on all agreements entered into
27 between a private developer and the Department of Transportation for participation in
28 private engineering and construction contracts under this section.

29 (i) ~~Municipalities~~ Counties and municipalities may participate financially in
30 private ~~engineering~~ engineering, land acquisition, and construction contracts for projects
31 pertaining to streets or highways which ~~are on a mutually adopted transportation plan~~
32 ~~for said municipality~~ meet the requirements of subsection (b) of this section within their
33 jurisdiction."

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



HOUSE BILL 2318: DOT/Partnership Agreements/Construction.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2008
Introduced by:	Rep. Cole	Summary by:	Wendy Graf Ray
Version:	PCS to Third Edition H2318-CSSU-89[v.2]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 2318 would authorize the Department of Transportation to enter partnership agreements for the construction of transportation infrastructure.*

[As introduced, this bill was identical to S1784, as introduced by Sen. Jenkins, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

CURRENT LAW: G.S. 136-18 authorizes the Department of Transportation to enter into public private partnership agreements to finance transportation infrastructure in North Carolina.

BILL ANALYSIS: The PCS for House Bill 2318 would extend the Department's public private partnership authority by allowing it to enter into agreements to construct (in addition to financing) roads, streets, bridges and existing rail, as well as properties adjoining existing rail lines. The PCS specifies that contracts for construction awarded pursuant to one of these agreements would be subject to the competitive bidding requirements that apply to other construction contracts entered into by the Department.

The PCS also makes technical/conforming changes to G.S. 136-28.6.

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

BACKGROUND: House Bill 2318 was a recommendation of the Joint Legislative Transportation Oversight Committee.

H2318e3-SMSU-CSSU-89v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 2318*
Committee Substitute Favorable 6/5/08
Third Edition Engrossed 6/12/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H2318-CSSU-89 [v.2]

7/8/2008 6:53:54 PM

Short Title: DOT/Partnership Agreements/Construction.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO
3 ENTER INTO PRIVATE PARTNERSHIP AGREEMENTS FOR
4 CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, AS
5 RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION
6 OVERSIGHT COMMITTEE.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 136-18(39) reads as rewritten:

9 "§ 136-18. Powers of Department of Transportation.

10 The said Department of Transportation is vested with the following powers:

11 ...

12 (39) To enter into partnership agreements with the North Carolina Turnpike
13 Authority, private entities, and authorized political subdivisions to
14 finance, by tolls, contracts, and other financing methods authorized by
15 law, the cost of acquiring, constructing, equipping, maintaining, and
16 operating transportation infrastructure in this State, with priority given
17 to highways, roads, streets, and ~~bridges~~ bridges, and to plan, design,
18 develop, acquire, construct, equip, maintain, and operate highways,
19 roads, streets, bridges and existing rail, as well as properties adjoining
20 existing rail lines, in this State. An agreement entered into under this
21 subdivision requires the concurrence of the Board of Transportation.
22 The Department shall report to the Chairs of the Joint Legislative
23 Transportation Oversight Committee, the Chairs of the House of
24 Representatives Appropriations Subcommittee on Transportation, and
25 the Chairs of the Senate Appropriations Committee on the Department
26 of Transportation, at the same time it notifies the Board of

1 Transportation of any proposed agreement under this subdivision. Any
2 contracts for construction of highways, roads, streets, and bridges
3 which are awarded pursuant to an agreement entered into under this
4 section shall comply with the competitive bidding requirements of
5 Article 2 of this Chapter."

6 **SECTION 2.** G.S. 136-28.6 reads as rewritten:

7 "**§ 136-28.6. ~~Private contract participation~~ Participation by the Department of**
8 **~~Transportation.~~ Transportation with private developers.**

9 (a) The Department of Transportation may participate in private engineering and
10 construction contracts for State highways.

11 (b) In order to qualify for State participation, the project must be:

12 (1) The construction of a street or highway on the Transportation
13 Improvement Plan adopted by the Department of Transportation; or

14 (2) The construction of a street or highway on a mutually adopted
15 transportation plan that is designated a Department of Transportation
16 responsibility.

17 (c) Only those projects in which ~~the developer furnishes~~ the right-of-way is
18 furnished without cost to the Department of Transportation are eligible.

19 (d) The Department's participation shall be limited to fifty percent (50%) of the
20 amount of any engineering contract and/or any construction contract let ~~by the~~
21 ~~developer~~ for the project.

22 (e) ~~Participation~~ Department of Transportation participation in the contracts shall
23 be limited to cost associated with normal practices of the Department of Transportation.

24 (f) Plans for the project must meet Department of Transportation standards and
25 shall be approved by the Department of Transportation.

26 (g) Projects shall be constructed in accordance with the plans and specifications
27 approved by the Department of Transportation.

28 (h) The Secretary shall report in writing, on a quarterly basis, to the Joint
29 Legislative Commission on Governmental Operations on all agreements entered into
30 between a private developer and the Department of Transportation for participation in
31 private engineering and construction contracts under this section.

32 (i) ~~Municipalities~~ Counties and municipalities may participate financially in
33 ~~private engineering~~ engineering, land acquisition, and construction contracts for projects
34 pertaining to streets or highways which are ~~on a mutually adopted transportation plan~~
35 ~~for said municipality~~ meet the requirements of subsection (b) of this section within their
36 jurisdiction."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE BILL 2318*
Committee Substitute Favorable 6/5/08
Third Edition Engrossed 6/12/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H2318-PCS60548-SU-89

Short Title: DOT/Partnership Agreements/Construction.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE THE DEPARTMENT OF TRANSPORTATION TO
ENTER INTO PRIVATE PARTNERSHIP AGREEMENTS FOR
CONSTRUCTION OF TRANSPORTATION INFRASTRUCTURE, AS
RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION
OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(39) reads as rewritten:

"§ 136-18. Powers of Department of Transportation.

The said Department of Transportation is vested with the following powers:

...

(39) To enter into partnership agreements with the North Carolina Turnpike Authority, private entities, and authorized political subdivisions to finance, by tolls, contracts, and other financing methods authorized by law, the cost of acquiring, constructing, equipping, maintaining, and operating transportation infrastructure in this State, with priority given to highways, roads, streets, and ~~bridges~~ bridges, and to plan, design, develop, acquire, construct, equip, maintain, and operate highways, roads, streets, bridges, and existing rail, as well as properties adjoining existing rail lines in this State. An agreement entered into under this subdivision requires the concurrence of the Board of Transportation. The Department shall report to the Chairs of the Joint Legislative Transportation Oversight Committee, the Chairs of the House of Representatives Appropriations Subcommittee on Transportation, and the Chairs of the Senate Appropriations Committee on the Department of Transportation, at the same time it notifies the Board of

1 Transportation of any proposed agreement under this subdivision. Any
2 contracts for construction of highways, roads, streets, and bridges
3 which are awarded pursuant to an agreement entered into under this
4 section shall comply with the competitive bidding requirements of
5 Article 2 of this Chapter."

6 **SECTION 2.** G.S. 136-28.6 reads as rewritten:

7 "**§ 136-28.6. ~~Private contract participation~~ Participation by the Department of**
8 **~~Transportation.~~ Transportation with private developers.**

9 (a) The Department of Transportation may participate in private engineering and
10 construction contracts for State highways.

11 (b) In order to qualify for State participation, the project must be:

12 (1) The construction of a street or highway on the Transportation
13 Improvement Plan adopted by the Department of Transportation; or

14 (2) The construction of a street or highway on a mutually adopted
15 transportation plan that is designated a Department of Transportation
16 responsibility.

17 (c) Only those projects in which ~~the developer furnishes~~ the right-of-way is
18 furnished without cost to the Department of Transportation are eligible.

19 (d) The Department's participation shall be limited to fifty percent (50%) of the
20 amount of any engineering contract and/or any construction contract let ~~by the~~
21 ~~developer~~ for the project.

22 (e) ~~Participation~~ Department of Transportation participation in the contracts shall
23 be limited to cost associated with normal practices of the Department of Transportation.

24 (f) Plans for the project must meet Department of Transportation standards and
25 shall be approved by the Department of Transportation.

26 (g) Projects shall be constructed in accordance with the plans and specifications
27 approved by the Department of Transportation.

28 (h) The Secretary shall report in writing, on a quarterly basis, to the Joint
29 Legislative Commission on Governmental Operations on all agreements entered into
30 between a private developer and the Department of Transportation for participation in
31 private engineering and construction contracts under this section.

32 (i) ~~Municipalities~~ Counties and municipalities may participate financially in
33 private ~~engineering~~ engineering, land acquisition, and construction contracts for projects
34 pertaining to streets or highways which are ~~on a mutually adopted transportation plan~~
35 ~~for said municipality~~ meet the requirements of subsection (b) of this section within their
36 jurisdiction."

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

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, July 10, 2008

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO
SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1) 2314	Voluntary County Participation/DOT.-AB
	Draft Number: PCS60549
	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) 2720	Energy-Efficient State Motor Vehicle Fleets.
	Draft Number: PCS60547
	Sequential Referral: None
	Recommended Referral: None
	Long Title Amended: Yes

TOTAL REPORTED: 2

Committee Clerk Comments:

ID= SB 1790

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING VOLUNTARY LOCAL GOVERNMENT
FINANCIAL PARTICIPATION IN DEPARTMENT OF TRANSPORTATION PROJECTS, AS
RECOMMENDED BY THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

Introduced by Representative(s):

Cole

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only

Committee on Transportation
being present, having considered
bill, recommend that it do pass.

Rep. Carney

For the Committee

FAVORABLE TO COMM. SUB
UNFAVORABLE TO BILL

JUL 1 2008

366 AND PLACED ON
CALENDAR FOR

7-2-08

114-3 EV VV
PASSED 2nd & 3rd
READING

JUL 2 2008

ORDERED SENT TO SENATE

Special Message

Denise Walker

RECEIVED

JUL 2 2008

From House of Representatives
By Clerk 6:16 AM PM

PASSED 1st READING

JUL 3 - 2008

AND REFERRED TO COMMITTEE
ON Commerce, Small

Bus, & Entrepreneurship

public transportation corridor included in the adopted long-range transportation plan.

(2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.

(3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.

(4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.

(5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

(a1) No transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

(1) The governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:

a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.

b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.

c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.

d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.

- 1 (2) A permanent certified copy of the transportation corridor official map
2 or amendment has been filed with the register of deeds. The
3 boundaries may be defined by map or by written description, or a
4 combination thereof. The copy shall measure approximately 20 inches
5 by 12 inches, including no less than one and one-half inches binding
6 space on the left-hand side.
- 7 (3) The names of all property owners affected by the corridor have been
8 submitted to the Register of Deeds.
- 9 (b) Transportation corridor official maps and amendments shall be distributed
10 and maintained in the following manner:
- 11 (1) A copy of the official map and each amendment thereto shall be filed
12 in the office of the city clerk and in the office of the district engineer.
- 13 (2) A copy of the official map, each amendment thereto and any variance
14 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the
15 tax supervisor of any county and tax collector of any city affected
16 thereby. The portion of properties embraced within a transportation
17 corridor and any variance granted shall be clearly indicated on all tax
18 maps maintained by the county or city for such period as the
19 designation remains in effect.
- 20 (3) Notwithstanding any other provision of law, the certified copy filed
21 with the register of deeds shall be placed in a book maintained for that
22 purpose and cross-indexed by number of road, street name, or other
23 appropriate description. The register of deeds shall collect a fee of five
24 dollars (\$5.00) for each map sheet or page recorded.
- 25 (4) The names submitted as required under subdivision (a)(3) of this
26 section shall be indexed in the "grantor" index by the Register of
27 Deeds.
- 28 (c) Repealed by Session Laws 1989, c. 595, s. 1.
- 29 (d) Within one year following the establishment of a transportation corridor
30 official map or amendment, work shall begin on an environmental impact statement or
31 preliminary engineering. The failure to begin work on the environmental impact
32 statement or preliminary engineering within the one-year period shall constitute an
33 abandonment of the corridor, and the provisions of this Article shall no longer apply to
34 properties or portions of properties embraced within the transportation corridor. A ~~city~~
35 local government may prepare environmental impact studies and preliminary
36 engineering work in connection with the establishment of a transportation corridor
37 official map or amendments to a transportation corridor official map. When a city or
38 county prepares a transportation corridor official map for a street or highway that has
39 been designated a State responsibility pursuant to G.S. 136-66.2, the environmental
40 impact study and preliminary engineering work shall be reviewed and approved by the
41 Department of Transportation. An amendment to a corridor shall not extend the
42 one-year period provided by this section unless it establishes a substantially different
43 corridor in a primarily new location.

1 (e) The term "amendment" for purposes of this section includes any change to a
2 transportation corridor official map, including:

- 3 (1) Failure of the Department of Transportation, the North Carolina
4 Turnpike Authority, a city, a county, or a regional transportation
5 authority to begin work on an environmental impact statement or
6 preliminary engineering as required by this section; or
7 (2) Deletion of the corridor from the transportation corridor official map
8 by action of the Board of Transportation, the North Carolina Turnpike
9 Authority, or deletion of the corridor from the long-range
10 transportation plan of a ~~city~~-city, county, or regional transportation
11 authority by action of the ~~city~~-city, county, or regional transportation
12 authority governing Board.

13 (f) The term "transportation corridor" as used in this Article does not include
14 bikeways or greenways."

15 **SECTION 3.** G.S. 136-44.52 reads as rewritten:

16 **"§ 136-44.52. Variance from transportation corridor official map.**

17 (a) The Department of Transportation, the regional public transportation
18 authority, the regional transportation authority, or the ~~city~~-local government which
19 initiated the transportation corridor official map shall establish procedures for
20 considering petitions for variance from the requirements of G.S. 136-44.51.

21 (b) The procedure established by the State shall provide for written notice to the
22 Mayor and Chairman of the Board of County Commissioners of any affected city or
23 county, and for the hearing to be held in the county where the affected property is
24 located.

25 (c) Cities-Local governments may provide for petitions for variances to be heard
26 by the board of adjustment or other boards or commissions which can hear variances
27 authorized by G.S. 160A-388. The procedures for boards of adjustment shall be
28 followed except that no vote greater than a majority shall be required to grant a
29 variance.

30 (c1) The procedure established by a regional public transportation authority or a
31 regional transportation authority pursuant to subsection (a) of this section shall provide
32 for a hearing de novo by the Department of Transportation for any petition for variance
33 which is denied by the regional public transportation authority or the regional
34 transportation authority. All hearings held by the Department of Transportation under
35 this subsection shall be conducted in accordance with procedures established by the
36 Department of Transportation pursuant to subsection (a) of this section.

37 (d) A variance may be granted upon a showing that:

- 38 (1) Even with the tax benefits authorized by this Article, no reasonable
39 return may be earned from the land; and
40 (2) The requirements of G.S. 136-44.51 result in practical difficulties or
41 unnecessary hardships."

42 **SECTION 4.** G.S. 136-44.53 reads as rewritten:

43 **"§ 136-44.53. Advance acquisition of right-of-way within the transportation**
44 **corridor.**

1 (a) After a transportation corridor official map is filed with the register of deeds,
2 a property owner has the right of petition to the filer of the map for acquisition of the
3 property due to an imposed hardship. The Department of Transportation, the regional
4 public transportation authority, the regional transportation authority, or the ~~city~~ which
5 local government that initiated the transportation corridor official map may make
6 advanced acquisition of specific parcels of property when that acquisition is determined
7 by the respective governing board to be in the best public interest to protect the
8 transportation corridor from development or when the transportation corridor official
9 map creates an undue hardship on the affected property owner. The procedure
10 established by a regional public transportation authority or a regional transportation
11 authority pursuant to subsection (b) of this section shall provide for a hearing de novo
12 by the Department of Transportation for any request for advance acquisition due to
13 hardship that is denied by an authority. All hearings held by the Department under this
14 subsection shall be conducted in accordance with procedures established by the
15 Department pursuant to subsection (b) of this section. Any decision of the Department
16 pursuant to this subsection shall be final and binding. Any property determined eligible
17 for hardship acquisition shall be acquired within three years of the finding or the
18 restrictions of the map shall be removed from the property.

19 (b) Prior to making any advanced acquisition of right-of-way under the authority
20 of this Article, the Board of Transportation or the respective governing board which
21 initiated the transportation corridor official map shall develop and adopt appropriate
22 policies and procedures to govern the advanced acquisition of right-of-way and to
23 assure that the advanced acquisition is in the best overall public interest.

24 (c) When a ~~city~~ local government makes an advanced right-of-way acquisition of
25 property within a transportation corridor official map for a street or highway that has
26 been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2,
27 the Department of Transportation shall reimburse the ~~city~~ local government for the cost
28 of any advanced right-of-way acquisition at the time the street or highway is
29 constructed. The Department of Transportation shall have no responsibility to reimburse
30 a municipality for any advanced right-of-way acquisition for a street or highway that
31 has not been designated a State responsibility pursuant to the provisions of
32 G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The ~~city~~
33 local government shall obtain the concurrence of the Department of Transportation in
34 all instances of advanced acquisition.

35 (d) In exercising the authority granted by this section, a ~~municipality~~ local
36 government is authorized to expend ~~municipal~~ its funds for the protection of
37 rights-of-way shown on a duly adopted transportation corridor official map whether the
38 right-of-way to be acquired is located inside or outside ~~the~~ a municipal corporate
39 limits."

40 **SECTION 5. G.S. 136-66.3 reads as rewritten:**

41 **"§ 136-66.3. Municipal-Local government participation in improvements to the**
42 **State highway system.**

43 (a) Municipal Participation Authorized. – A municipality may, but is not required
44 to, participate in the right-of-way and construction cost of a State highway improvement

1 approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in
2 the municipality or its extraterritorial jurisdiction.

3 (b) Process for Initiating Participation. – A municipality interested in
4 participating in the funding of a State highway improvement project may submit a
5 proposal to the Department of Transportation. The Department and the municipality
6 shall include their respective responsibilities for a proposed municipal participation
7 project in any agreement reached concerning participation.

8 (c) Type of Participation Authorized. – A municipality is authorized and
9 empowered to acquire land by dedication and acceptance, purchase, or eminent domain,
10 and make improvements to portions of the State highway system lying within or outside
11 the municipal corporate limits utilizing local funds that have been authorized for that
12 purpose. All improvements to the State highway system shall be done in accordance
13 with the specifications and requirements of the Department of Transportation.

14 (c1) No TIP Disadvantage for Participation. – If a county or municipality
15 participates in a State highway system improvement project, as authorized by this
16 section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the
17 ~~municipality's local government's~~ participation does not cause any disadvantage to any
18 other project in the Transportation Improvement Program under G.S. 143B-350(f)(4)
19 and located ~~outside the municipality in that county~~.

20 (c2) Distribution of State Funds Made Available by County or Municipal
21 Participation. – Any State or federal funds allocated to a project that are made available
22 by county or municipal participation in a project contained in the Transportation
23 Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding
24 region that the funding was allocated to under the distribution formula contained in
25 G.S. 136-17.2A.

26 (c3) Limitation on Agreements. – The Department shall not enter into any
27 agreement with a county or municipality to provide additional total funding for highway
28 construction in the county or municipality in exchange for county or municipal
29 participation in any project contained in the Transportation Improvement Program under
30 G.S. 143B-350(f)(4).

31 (d) Authorization to Participate in Development-Related Improvements. – When
32 in the review and approval by a ~~municipality-local government~~ of plans for the
33 development of property abutting the State highway system it is determined by the
34 municipality that improvements to the State highway system are necessary to provide
35 for the safe and orderly movement of traffic, the ~~municipality-local government~~ is
36 authorized to construct, or have constructed, said improvements to the State highway
37 system in vicinity of the development. For purposes of this section, improvements
38 include but are not limited to additional travel lanes, turn lanes, curb and gutter, and
39 drainage facilities. All improvements to the State highway system shall be constructed
40 in accordance with the specifications and requirements of the Department of
41 Transportation and be approved by the Department of Transportation.

42 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement
43 with the Department of Transportation, a county or municipality may reimburse the
44 Department of Transportation for the cost of all improvements, including additional

1 right-of-way, for a street or highway improvement projects approved by the Board of
2 Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
3 that the Department of Transportation would normally include in the project.

4 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the
5 Department of Transportation shall allow the ~~municipality~~ local government a period of
6 not less than three years from the date construction of the project is initiated to
7 reimburse the Department their agreed upon share of the costs necessary for the project.
8 The Department of Transportation shall not charge a ~~municipality~~ local government any
9 interest during the initial three years.

10 (f) Report to General Assembly. – The Department shall report in writing, on a
11 monthly basis, to the Joint Legislative Commission on Governmental Operations on all
12 agreements entered into between counties, municipalities and the Department of
13 Transportation. The report shall state in summary form the contents of such agreements.

14 (g) ~~Municipal~~ Local Government Acquisition of Rights-of-Way. – In the
15 acquisition of rights-of-way for any State highway system street or ~~highway in or~~
16 ~~around a municipality~~, highway, the county or municipality shall be vested with the
17 same authority to acquire such rights-of-way as is granted to the Department of
18 Transportation in this Chapter. In the acquisition of such rights-of-way, counties and
19 municipalities may use the procedures provided in Article 9 of this Chapter, and
20 wherever the words "Department of Transportation" appear in Article 9 they shall be
21 deemed to include "county," "municipality" or ~~municipal~~ local governing body, and
22 wherever the words "Administrator," "Administrator of Highways," "Administrator of
23 the Department of Transportation," or "Chairman of the Department of Transportation"
24 appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the
25 intention of this subsection that the powers herein granted to municipalities for the
26 purpose of acquiring rights-of-way shall be in addition to and supplementary to those
27 powers granted in any local act or in any other general statute, and in any case in which
28 the provisions of this subsection or Article 9 of this Chapter are in conflict with the
29 provisions of any local act or any other provision of any general statute, then the
30 governing body of the county or municipality may in its discretion proceed in
31 accordance with the provisions of such local act or other general statute, or, as an
32 alternative method of procedure, in accordance with the provisions of this subsection
33 and Article 9 of this Chapter.

34 (h) Department Authority Concerning Rights-of-Way. – In the absence of an
35 agreement, the Department of Transportation shall retain authority to pay the full cost of
36 acquiring rights-of-way where the proposed project is deemed important to a
37 coordinated State highway system.

38 (i) Changes to ~~Municipal~~ Local Government Participation Agreement. – Either
39 the ~~municipality~~ local government or the Department of Transportation may at any time
40 propose changes in the agreement setting forth their respective responsibilities by giving
41 notice to the other party, but no change shall be effective until it is adopted by both the
42 municipal governing body and the Department of Transportation.

43 (j) ~~Municipality~~ Local Governments Party to Rights-of-Way Proceeding. – Any
44 municipality that agrees to contribute any part of the cost of acquiring rights-of-way for

1 any State highway system street or highway shall be a proper party in any proceeding in
2 court relating to the acquisition of such rights-of-way.

3 ~~(k) Specified County Participation. In addition to the authority given to Burke,~~
4 ~~Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these~~
5 ~~counties are authorized to participate in State highway improvement projects located~~
6 ~~anywhere in each respective county in accordance with this section."~~

7 **SECTION 6.** G.S. 136-98 reads as rewritten:

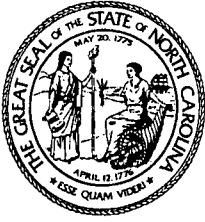
8 **"§ 136-98. Counties authorized to participate in costs of road construction and**
9 **maintenance.maintenance, participation is voluntary.**

10 (a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

11 (b) Nothing in this Article prohibits counties from establishing service districts
12 for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

13 (c) A county is authorized to participate in the cost of rights-of-way,
14 construction, reconstruction, improvement, or maintenance of a road on the State
15 highway system under agreement with the Department of Transportation. County
16 participation in improvements to the State highway system is voluntary. The
17 Department shall not transfer any of its responsibilities to counties without specific
18 statutory authority."

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



HOUSE BILL 2314: Voluntary County Participation/DOT.-AB

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2008
Introduced by:	Rep. Cole	Summary by:	Wendy Graf Ray
Version:	PCS to Second Edition H2314-CSSU-92[v.1]		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 2314 would amend local government references in several statutes to include counties in order to conform to a change in the law, enacted in 2007, that gave counties the authority to participate in the financing of highway construction.*

[As introduced, this bill was identical to S1790, as introduced by Sen. Jenkins, which is currently in Senate Commerce, Small Business and Entrepreneurship.]

CURRENT LAW: S.L. 2007-428 authorized counties to participate in the cost of rights-of-way, construction, reconstruction, improvement, or maintenance of roads on the State highway System under agreement with the Department of Transportation.

BILL ANALYSIS: The PCS for House Bill 2314 would make conforming changes to several existing statutes to account for the authority given to counties by S.L. 2007-428 to participate in the cost of highway construction.

- **Section 1** would provide that the ability of a local government (not just a municipality) to pay for a transportation improvement project may not be a factor in developing and approving the TIP.
- **Section 2** would amend G.S. 136-18, the powers of the Department of Transportation, to provide that the Department may establish policies for voluntary local government participation in highway projects.
- **Sections 3, 4 and 5** would amend the Transportation Corridor Official Map Act, which authorizes reservation of road corridors by prohibiting issuance of building permits or approval of subdivisions for a three year period, to provide that it includes counties.
- **Section 6** would clarify that the existing procedural requirements for municipal participation in improvements to the State Highway System, G.S. 136-66.3, apply to counties.
- **Section 7** would amend G.S. 136-98, which authorizes counties to participate in State highway projects, to clarify that participation is voluntary, and that the Department shall not transfer any of its responsibilities to counties without specific statutory authority.

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

BACKGROUND: This bill is a recommendation of the Joint Legislative Transportation Oversight Committee.

Giles Perry, counsel to the House Transportation Committee, contributed to this summary.

H2314e2-SMSU-CSSU-92v1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2314*

Committee Substitute Favorable 7/1/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2314-CSSU-92 [v.1]

7/8/2008 7:10:42 PM

Short Title: Voluntary County Participation/DOT.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING VOLUNTARY
LOCAL GOVERNMENT FINANCIAL PARTICIPATION IN DEPARTMENT OF
TRANSPORTATION PROJECTS, AS RECOMMENDED BY THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-350(f1) reads as rewritten:

"(f1) ~~Municipal~~ Local Government Participation. – The ability of a ~~municipality~~
local government to pay in part or whole for any transportation improvement project
shall not be a factor considered by the Board of Transportation in its development and
approval of a schedule of major State highway system improvement projects to be
undertaken by the Department under G.S. 143B-350(f)(4)."

SECTION 2. G.S. 136-18(27) reads as rewritten:

"(27) The Department of Transportation is authorized to establish policies
and promulgate rules providing for voluntary local government,
property owner or highway user participation in the costs of
maintenance or improvement of roads which would not otherwise be
necessary or would not otherwise be performed by the Department of
Transportation and which will result in a benefit to the property owner
or highway user. By way of illustration and not as a limitation, such
costs include those incurred in connection with drainage improvements
or maintenance, driveway connections, dust control on unpaved roads,
surfacing or paving of roads and the acquisition of rights-of-way.
~~Property~~ Local government, property owner and highway user
participation can be in the form of materials, money, or land (for
right-of-way) as deemed appropriate by the Department of

Transportation. The authority of this section shall not be used to authorize, construct or maintain toll roads or bridges."

SECTION 3. G.S. 136-44.50 reads as rewritten:

"§ 136-44.50. Transportation corridor official map act.

(a) A transportation corridor official map may be adopted or amended by any of the following:

- (1) The governing board of any ~~city~~ local government for any thoroughfare included as part of a comprehensive plan for streets and highways adopted pursuant to G.S. 136-66.2 or for any proposed public transportation corridor included in the adopted long-range transportation plan.
- (2) The Board of Transportation for any portion of the existing or proposed State highway system or for any public transportation corridor, to include rail, that is in the Transportation Improvement Program.
- (3) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes or regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes for any proposed public transportation corridor, or adjacent station or parking lot, included in the adopted long-range transportation plan.
- (4) The North Carolina Turnpike Authority for any project being studied pursuant to G.S. 136-89.183.
- (5) The Wilmington Urban Area Metropolitan Planning Organization for any project that is within its urbanized boundary and identified in G.S. 136-179.

Before a city adopts a transportation corridor official map that extends beyond the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, or adopts an amendment to a transportation corridor official map outside the extraterritorial jurisdiction of its building permit issuance and subdivision control ordinances, the city shall obtain approval from the Board of County Commissioners.

(a1) No transportation corridor official map shall be adopted or amended, nor may any property be regulated under this Article until:

- (1) The governing board of the city, the county, the regional transportation authority, the North Carolina Turnpike Authority, or the Department of Transportation has held a public hearing in each county affected by the map on the proposed map or amendment. Notice of the hearing shall be provided:
 - a. By publication at least once a week for four successive weeks prior to the hearing in a newspaper having general circulation in the county in which the transportation corridor to be designated is located.
 - b. By two week written notice to the Secretary of Transportation, the Chairman of the Board of County Commissioners, and the

- 1 Mayor of any city or town through whose corporate or
2 extraterritorial jurisdiction the transportation corridor passes.
- 3 c. By posting copies of the proposed transportation corridor map
4 or amendment at the courthouse door for at least 21 days prior
5 to the hearing date. The notice required in sub-subdivision a.
6 above shall make reference to this posting.
- 7 d. By first-class mail sent to each property owner affected by the
8 corridor. The notice shall be sent to the address listed for the
9 owner in the county tax records.
- 10 (2) A permanent certified copy of the transportation corridor official map
11 or amendment has been filed with the register of deeds. The
12 boundaries may be defined by map or by written description, or a
13 combination thereof. The copy shall measure approximately 20 inches
14 by 12 inches, including no less than one and one-half inches binding
15 space on the left-hand side.
- 16 (3) The names of all property owners affected by the corridor have been
17 submitted to the Register of Deeds.
- 18 (b) Transportation corridor official maps and amendments shall be distributed
19 and maintained in the following manner:
- 20 (1) A copy of the official map and each amendment thereto shall be filed
21 in the office of the city clerk and in the office of the district engineer.
- 22 (2) A copy of the official map, each amendment thereto and any variance
23 therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the
24 tax supervisor of any county and tax collector of any city affected
25 thereby. The portion of properties embraced within a transportation
26 corridor and any variance granted shall be clearly indicated on all tax
27 maps maintained by the county or city for such period as the
28 designation remains in effect.
- 29 (3) Notwithstanding any other provision of law, the certified copy filed
30 with the register of deeds shall be placed in a book maintained for that
31 purpose and cross-indexed by number of road, street name, or other
32 appropriate description. The register of deeds shall collect a fee of five
33 dollars (\$5.00) for each map sheet or page recorded.
- 34 (4) The names submitted as required under subdivision (a)(3) of this
35 section shall be indexed in the "grantor" index by the Register of
36 Deeds.
- 37 (c) Repealed by Session Laws 1989, c. 595, s. 1.
- 38 (d) Within one year following the establishment of a transportation corridor
39 official map or amendment, work shall begin on an environmental impact statement or
40 preliminary engineering. The failure to begin work on the environmental impact
41 statement or preliminary engineering within the one-year period shall constitute an
42 abandonment of the corridor, and the provisions of this Article shall no longer apply to
43 properties or portions of properties embraced within the transportation corridor. A ~~city~~
44 local government may prepare environmental impact studies and preliminary

1 engineering work in connection with the establishment of a transportation corridor
2 official map or amendments to a transportation corridor official map. When a city or
3 county prepares a transportation corridor official map for a street or highway that has
4 been designated a State responsibility pursuant to G.S. 136-66.2, the environmental
5 impact study and preliminary engineering work shall be reviewed and approved by the
6 Department of Transportation. An amendment to a corridor shall not extend the
7 one-year period provided by this section unless it establishes a substantially different
8 corridor in a primarily new location.

9 (e) The term "amendment" for purposes of this section includes any change to a
10 transportation corridor official map, including:

- 11 (1) Failure of the Department of Transportation, the North Carolina
12 Turnpike Authority, a city, a county, or a regional transportation
13 authority to begin work on an environmental impact statement or
14 preliminary engineering as required by this section; or
- 15 (2) Deletion of the corridor from the transportation corridor official map
16 by action of the Board of Transportation, the North Carolina Turnpike
17 Authority, or deletion of the corridor from the long-range
18 transportation plan of a ~~city~~-city, county, or regional transportation
19 authority by action of the ~~city~~-city, county, or regional transportation
20 authority governing Board.

21 (f) The term "transportation corridor" as used in this Article does not include
22 bikeways or greenways."

23 **SECTION 4.** G.S. 136-44.52 reads as rewritten:

24 **"§ 136-44.52. Variance from transportation corridor official map.**

25 (a) The Department of Transportation, the regional public transportation
26 authority, the regional transportation authority, or the ~~city~~-local government which
27 initiated the transportation corridor official map shall establish procedures for
28 considering petitions for variance from the requirements of G.S. 136-44.51.

29 (b) The procedure established by the State shall provide for written notice to the
30 Mayor and Chairman of the Board of County Commissioners of any affected city or
31 county, and for the hearing to be held in the county where the affected property is
32 located.

33 (c) ~~Cities-Local governments~~ may provide for petitions for variances to be heard
34 by the board of adjustment or other boards or commissions which can hear variances
35 authorized by G.S. 160A-388. The procedures for boards of adjustment shall be
36 followed except that no vote greater than a majority shall be required to grant a
37 variance.

38 (c1) The procedure established by a regional public transportation authority or a
39 regional transportation authority pursuant to subsection (a) of this section shall provide
40 for a hearing de novo by the Department of Transportation for any petition for variance
41 which is denied by the regional public transportation authority or the regional
42 transportation authority. All hearings held by the Department of Transportation under
43 this subsection shall be conducted in accordance with procedures established by the
44 Department of Transportation pursuant to subsection (a) of this section.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships."

SECTION 5. G.S. 136-44.53 reads as rewritten:

"§ 136-44.53. Advance acquisition of right-of-way within the transportation corridor.

(a) After a transportation corridor official map is filed with the register of deeds, a property owner has the right of petition to the filer of the map for acquisition of the property due to an imposed hardship. The Department of Transportation, the regional public transportation authority, the regional transportation authority, or the ~~city which~~ local government that initiated the transportation corridor official map may make advanced acquisition of specific parcels of property when that acquisition is determined by the respective governing board to be in the best public interest to protect the transportation corridor from development or when the transportation corridor official map creates an undue hardship on the affected property owner. The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (b) of this section shall provide for a hearing de novo by the Department of Transportation for any request for advance acquisition due to hardship that is denied by an authority. All hearings held by the Department under this subsection shall be conducted in accordance with procedures established by the Department pursuant to subsection (b) of this section. Any decision of the Department pursuant to this subsection shall be final and binding. Any property determined eligible for hardship acquisition shall be acquired within three years of the finding or the restrictions of the map shall be removed from the property.

(b) Prior to making any advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective governing board which initiated the transportation corridor official map shall develop and adopt appropriate policies and procedures to govern the advanced acquisition of right-of-way and to assure that the advanced acquisition is in the best overall public interest.

(c) When a ~~city~~ local government makes an advanced right-of-way acquisition of property within a transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the ~~city~~ local government for the cost of any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The ~~city~~ local government shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a ~~municipality~~ local government is authorized to expend ~~municipal~~ its funds for the protection of

rights-of-way shown on a duly adopted transportation corridor official map whether the right-of-way to be acquired is located inside or outside ~~the~~ a municipal corporate limits."

SECTION 6. G.S. 136-66.3 reads as rewritten:

"§ 136-66.3. Municipal-Local government participation in improvements to the State highway system.

(a) **Municipal Participation Authorized.** – A municipality may, but is not required to, participate in the right-of-way and construction cost of a State highway improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) **Process for Initiating Participation.** – A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) **Type of Participation Authorized.** – A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that purpose. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation.

(c1) **No TIP Disadvantage for Participation.** – If a county or municipality participates in a State highway system improvement project, as authorized by this section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the ~~municipality's local government's~~ participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4). ~~G.S. 143B-350(f)(4) and located outside the municipality.~~

(c2) **Distribution of State Funds Made Available by County or Municipal Participation.** – Any State or federal funds allocated to a project that are made available by county or municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) **Limitation on Agreements.** – The Department shall not enter into any agreement with a county or municipality to provide additional total funding for highway construction in the county or municipality in exchange for county or municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) **Authorization to Participate in Development-Related Improvements.** – When in the review and approval by a ~~municipality-local government~~ of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the ~~municipality-local government~~ is authorized to construct, or have constructed, said improvements to the State highway

1 system in vicinity of the development. For purposes of this section, improvements
2 include but are not limited to additional travel lanes, turn lanes, curb and gutter, and
3 drainage facilities. All improvements to the State highway system shall be constructed
4 in accordance with the specifications and requirements of the Department of
5 Transportation and be approved by the Department of Transportation.

6 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement
7 with the Department of Transportation, a county or municipality may reimburse the
8 Department of Transportation for the cost of all improvements, including additional
9 right-of-way, for a street or highway improvement projects approved by the Board of
10 Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
11 that the Department of Transportation would normally include in the project.

12 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the
13 Department of Transportation shall allow the ~~municipality~~ local government a period of
14 not less than three years from the date construction of the project is initiated to
15 reimburse the Department their agreed upon share of the costs necessary for the project.
16 The Department of Transportation shall not charge a ~~municipality~~ local government any
17 interest during the initial three years.

18 (f) Report to General Assembly. – The Department shall report in writing, on a
19 monthly basis, to the Joint Legislative Commission on Governmental Operations on all
20 agreements entered into between counties, municipalities and the Department of
21 Transportation. The report shall state in summary form the contents of such agreements.

22 (g) ~~Municipal~~ Local Government Acquisition of Rights-of-Way. – In the
23 acquisition of rights-of-way for any State highway system street or ~~highway in or~~
24 ~~around a municipality~~, highway, the county or municipality shall be vested with the
25 same authority to acquire such rights-of-way as is granted to the Department of
26 Transportation in this Chapter. In the acquisition of such rights-of-way, counties and
27 municipalities may use the procedures provided in Article 9 of this Chapter, and
28 wherever the words "Department of Transportation" appear in Article 9 they shall be
29 deemed to include "county," "municipality" or ~~municipal~~ local governing body, and
30 wherever the words "Administrator," "Administrator of Highways," "Administrator of
31 the Department of Transportation," or "Chairman of the Department of Transportation"
32 appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the
33 intention of this subsection that the powers herein granted to municipalities for the
34 purpose of acquiring rights-of-way shall be in addition to and supplementary to those
35 powers granted in any local act or in any other general statute, and in any case in which
36 the provisions of this subsection or Article 9 of this Chapter are in conflict with the
37 provisions of any local act or any other provision of any general statute, then the
38 governing body of the county or municipality may in its discretion proceed in
39 accordance with the provisions of such local act or other general statute, or, as an
40 alternative method of procedure, in accordance with the provisions of this subsection
41 and Article 9 of this Chapter.

42 (h) Department Authority Concerning Rights-of-Way. – In the absence of an
43 agreement, the Department of Transportation shall retain authority to pay the full cost of

1 acquiring rights-of-way where the proposed project is deemed important to a
2 coordinated State highway system.

3 (i) Changes to Municipal-Local Government Participation Agreement. – Either
4 the municipality-local government or the Department of Transportation may at any time
5 propose changes in the agreement setting forth their respective responsibilities by giving
6 notice to the other party, but no change shall be effective until it is adopted by both the
7 municipal governing body and the Department of Transportation.

8 (j) Municipality-Local Governments Party to Rights-of-Way Proceeding. – Any
9 municipality that agrees to contribute any part of the cost of acquiring rights-of-way for
10 any State highway system street or highway shall be a proper party in any proceeding in
11 court relating to the acquisition of such rights-of-way.

12 (k) Specified County Participation. – ~~In addition to the authority given to Burke,~~
13 ~~Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these~~
14 ~~counties are authorized to participate in State highway improvement projects located~~
15 ~~anywhere in each respective county in accordance with this section."~~

16 **SECTION 7.** G.S. 136-98 reads as rewritten:

17 **"§ 136-98. Counties authorized to participate in costs of road construction and**
18 **maintenance.maintenance, participation is voluntary.**

19 (a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

20 (b) Nothing in this Article prohibits counties from establishing service districts
21 for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

22 (c) A county is authorized to participate in the cost of rights-of-way,
23 construction, reconstruction, improvement, or maintenance of a road on the State
24 highway system under agreement with the Department of Transportation. County
25 participation in improvements to the State highway system is voluntary. The
26 Department shall not transfer any of its responsibilities to counties without specific
27 statutory authority."

28 **SECTION 8.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2314*

Committee Substitute Favorable 7/1/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2314-PCS60549-SU-92

Short Title: Voluntary County Participation/DOT.-AB

(Public)

Sponsors:

Referred to:

May 21, 2008

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE STATUTES GOVERNING VOLUNTARY
LOCAL GOVERNMENT FINANCIAL PARTICIPATION IN DEPARTMENT OF
TRANSPORTATION PROJECTS, AS RECOMMENDED BY THE JOINT
LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-350(f1) reads as rewritten:

"(f1) ~~Municipal~~ Local Government Participation. – The ability of a ~~municipality~~
local government to pay in part or whole for any transportation improvement project
shall not be a factor considered by the Board of Transportation in its development and
approval of a schedule of major State highway system improvement projects to be
undertaken by the Department under G.S. 143B-350(f)(4)."

SECTION 2. G.S. 136-18(27) reads as rewritten:

"(27) The Department of Transportation is authorized to establish policies
and promulgate rules providing for voluntary local government,
property owner or highway user participation in the costs of
maintenance or improvement of roads which would not otherwise be
necessary or would not otherwise be performed by the Department of
Transportation and which will result in a benefit to the property owner
or highway user. By way of illustration and not as a limitation, such
costs include those incurred in connection with drainage improvements
or maintenance, driveway connections, dust control on unpaved roads,
surfacing or paving of roads and the acquisition of rights-of-way.
~~Property~~ Local government, property owner and highway user
participation can be in the form of materials, money, or land (for
right-of-way) as deemed appropriate by the Department of

1 Transportation. The authority of this section shall not be used to
2 authorize, construct or maintain toll roads or bridges."

3 **SECTION 3.** G.S. 136-44.50 reads as rewritten:

4 **"§ 136-44.50. Transportation corridor official map act.**

5 (a) A transportation corridor official map may be adopted or amended by any of
6 the following:

- 7 (1) The governing board of any ~~city~~local government for any
8 thoroughfare included as part of a comprehensive plan for streets and
9 highways adopted pursuant to G.S. 136-66.2 or for any proposed
10 public transportation corridor included in the adopted long-range
11 transportation plan.
- 12 (2) The Board of Transportation for any portion of the existing or
13 proposed State highway system or for any public transportation
14 corridor, to include rail, that is in the Transportation Improvement
15 Program.
- 16 (3) Regional public transportation authorities created pursuant to Article
17 26 of Chapter 160A of the General Statutes or regional transportation
18 authorities created pursuant to Article 27 of Chapter 160A of the
19 General Statutes for any proposed public transportation corridor, or
20 adjacent station or parking lot, included in the adopted long-range
21 transportation plan.
- 22 (4) The North Carolina Turnpike Authority for any project being studied
23 pursuant to G.S. 136-89.183.
- 24 (5) The Wilmington Urban Area Metropolitan Planning Organization for
25 any project that is within its urbanized boundary and identified in
26 G.S. 136-179.

27 Before a city adopts a transportation corridor official map that extends beyond the
28 extraterritorial jurisdiction of its building permit issuance and subdivision control
29 ordinances, or adopts an amendment to a transportation corridor official map outside the
30 extraterritorial jurisdiction of its building permit issuance and subdivision control
31 ordinances, the city shall obtain approval from the Board of County Commissioners.

32 (a1) No transportation corridor official map shall be adopted or amended, nor may
33 any property be regulated under this Article until:

- 34 (1) The governing board of the city, the county, the regional transportation
35 authority, the North Carolina Turnpike Authority, or the Department of
36 Transportation has held a public hearing in each county affected by the
37 map on the proposed map or amendment. Notice of the hearing shall
38 be provided:
- 39 a. By publication at least once a week for four successive weeks
40 prior to the hearing in a newspaper having general circulation in
41 the county in which the transportation corridor to be designated
42 is located.
- 43 b. By two week written notice to the Secretary of Transportation,
44 the Chairman of the Board of County Commissioners, and the

Mayor of any city or town through whose corporate or extraterritorial jurisdiction the transportation corridor passes.

- c. By posting copies of the proposed transportation corridor map or amendment at the courthouse door for at least 21 days prior to the hearing date. The notice required in sub-subdivision a. above shall make reference to this posting.
- d. By first-class mail sent to each property owner affected by the corridor. The notice shall be sent to the address listed for the owner in the county tax records.

(2) A permanent certified copy of the transportation corridor official map or amendment has been filed with the register of deeds. The boundaries may be defined by map or by written description, or a combination thereof. The copy shall measure approximately 20 inches by 12 inches, including no less than one and one-half inches binding space on the left-hand side.

(3) The names of all property owners affected by the corridor have been submitted to the Register of Deeds.

(b) Transportation corridor official maps and amendments shall be distributed and maintained in the following manner:

(1) A copy of the official map and each amendment thereto shall be filed in the office of the city clerk and in the office of the district engineer.

(2) A copy of the official map, each amendment thereto and any variance therefrom granted pursuant to G.S. 136-44.52 shall be furnished to the tax supervisor of any county and tax collector of any city affected thereby. The portion of properties embraced within a transportation corridor and any variance granted shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(3) Notwithstanding any other provision of law, the certified copy filed with the register of deeds shall be placed in a book maintained for that purpose and cross-indexed by number of road, street name, or other appropriate description. The register of deeds shall collect a fee of five dollars (\$5.00) for each map sheet or page recorded.

(4) The names submitted as required under subdivision (a)(3) of this section shall be indexed in the "grantor" index by the Register of Deeds.

(c) Repealed by Session Laws 1989, c. 595, s. 1.

(d) Within one year following the establishment of a transportation corridor official map or amendment, work shall begin on an environmental impact statement or preliminary engineering. The failure to begin work on the environmental impact statement or preliminary engineering within the one-year period shall constitute an abandonment of the corridor, and the provisions of this Article shall no longer apply to properties or portions of properties embraced within the transportation corridor. A city local government may prepare environmental impact studies and preliminary

1 engineering work in connection with the establishment of a transportation corridor
2 official map or amendments to a transportation corridor official map. When a city or
3 county prepares a transportation corridor official map for a street or highway that has
4 been designated a State responsibility pursuant to G.S. 136-66.2, the environmental
5 impact study and preliminary engineering work shall be reviewed and approved by the
6 Department of Transportation. An amendment to a corridor shall not extend the
7 one-year period provided by this section unless it establishes a substantially different
8 corridor in a primarily new location.

9 (e) The term "amendment" for purposes of this section includes any change to a
10 transportation corridor official map, including:

11 (1) Failure of the Department of Transportation, the North Carolina
12 Turnpike Authority, a city, a county, or a regional transportation
13 authority to begin work on an environmental impact statement or
14 preliminary engineering as required by this section; or

15 (2) Deletion of the corridor from the transportation corridor official map
16 by action of the Board of Transportation, the North Carolina Turnpike
17 Authority, or deletion of the corridor from the long-range
18 transportation plan of a ~~city~~ city, county, or regional transportation
19 authority by action of the ~~city~~ city, county, or regional transportation
20 authority governing Board.

21 (f) The term "transportation corridor" as used in this Article does not include
22 bikeways or greenways."

23 **SECTION 4.** G.S. 136-44.52 reads as rewritten:

24 **"§ 136-44.52. Variance from transportation corridor official map.**

25 (a) The Department of Transportation, the regional public transportation
26 authority, the regional transportation authority, or the ~~city~~ local government which
27 initiated the transportation corridor official map shall establish procedures for
28 considering petitions for variance from the requirements of G.S. 136-44.51.

29 (b) The procedure established by the State shall provide for written notice to the
30 Mayor and Chairman of the Board of County Commissioners of any affected city or
31 county, and for the hearing to be held in the county where the affected property is
32 located.

33 (c) ~~Cities~~ Local governments may provide for petitions for variances to be heard
34 by the board of adjustment or other boards or commissions which can hear variances
35 authorized by G.S. 160A-388. The procedures for boards of adjustment shall be
36 followed except that no vote greater than a majority shall be required to grant a
37 variance.

38 (c1) The procedure established by a regional public transportation authority or a
39 regional transportation authority pursuant to subsection (a) of this section shall provide
40 for a hearing de novo by the Department of Transportation for any petition for variance
41 which is denied by the regional public transportation authority or the regional
42 transportation authority. All hearings held by the Department of Transportation under
43 this subsection shall be conducted in accordance with procedures established by the
44 Department of Transportation pursuant to subsection (a) of this section.

(d) A variance may be granted upon a showing that:

(1) Even with the tax benefits authorized by this Article, no reasonable return may be earned from the land; and

(2) The requirements of G.S. 136-44.51 result in practical difficulties or unnecessary hardships."

SECTION 5. G.S. 136-44.53 reads as rewritten:

"§ 136-44.53. Advance acquisition of right-of-way within the transportation corridor.

(a) After a transportation corridor official map is filed with the register of deeds, a property owner has the right of petition to the filer of the map for acquisition of the property due to an imposed hardship. The Department of Transportation, the regional public transportation authority, the regional transportation authority, or the ~~city which~~ local government that initiated the transportation corridor official map may make advanced acquisition of specific parcels of property when that acquisition is determined by the respective governing board to be in the best public interest to protect the transportation corridor from development or when the transportation corridor official map creates an undue hardship on the affected property owner. The procedure established by a regional public transportation authority or a regional transportation authority pursuant to subsection (b) of this section shall provide for a hearing de novo by the Department of Transportation for any request for advance acquisition due to hardship that is denied by an authority. All hearings held by the Department under this subsection shall be conducted in accordance with procedures established by the Department pursuant to subsection (b) of this section. Any decision of the Department pursuant to this subsection shall be final and binding. Any property determined eligible for hardship acquisition shall be acquired within three years of the finding or the restrictions of the map shall be removed from the property.

(b) Prior to making any advanced acquisition of right-of-way under the authority of this Article, the Board of Transportation or the respective governing board which initiated the transportation corridor official map shall develop and adopt appropriate policies and procedures to govern the advanced acquisition of right-of-way and to assure that the advanced acquisition is in the best overall public interest.

(c) When a ~~city~~ local government makes an advanced right-of-way acquisition of property within a transportation corridor official map for a street or highway that has been determined to be a State responsibility pursuant to the provisions of G.S. 136-66.2, the Department of Transportation shall reimburse the ~~city~~ local government for the cost of any advanced right-of-way acquisition at the time the street or highway is constructed. The Department of Transportation shall have no responsibility to reimburse a municipality for any advanced right-of-way acquisition for a street or highway that has not been designated a State responsibility pursuant to the provisions of G.S. 136-66.2 prior to the initiation of the advanced acquisition by the city. The ~~city~~ local government shall obtain the concurrence of the Department of Transportation in all instances of advanced acquisition.

(d) In exercising the authority granted by this section, a ~~municipality~~ local government is authorized to expend ~~municipal~~ its funds for the protection of

1 rights-of-way shown on a duly adopted transportation corridor official map whether the
2 right-of-way to be acquired is located inside or outside ~~the~~ a municipal corporate
3 limits."

4 **SECTION 6.** G.S. 136-66.3 reads as rewritten:

5 "**§ 136-66.3. ~~Municipal~~ Local government participation in improvements to the**
6 **State highway system.**

7 (a) Municipal Participation Authorized. – A municipality may, but is not required
8 to, participate in the right-of-way and construction cost of a State highway improvement
9 approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in
10 the municipality or its extraterritorial jurisdiction. /

11 (b) Process for Initiating Participation. – A municipality interested in
12 participating in the funding of a State highway improvement project may submit a
13 proposal to the Department of Transportation. The Department and the municipality
14 shall include their respective responsibilities for a proposed municipal participation
15 project in any agreement reached concerning participation.

16 (c) Type of Participation Authorized. – A municipality is authorized and
17 empowered to acquire land by dedication and acceptance, purchase, or eminent domain,
18 and make improvements to portions of the State highway system lying within or outside
19 the municipal corporate limits utilizing local funds that have been authorized for that
20 purpose. All improvements to the State highway system shall be done in accordance
21 with the specifications and requirements of the Department of Transportation.

22 (c1) No TIP Disadvantage for Participation. – If a county or municipality
23 participates in a State highway system improvement project, as authorized by this
24 section, or by G.S. 136-51 and G.S. 136-98, the Department shall ensure that the
25 ~~municipality's local government's~~ participation does not cause any disadvantage to any
26 other project in the Transportation Improvement Program under
27 G.S. 143B-350(f)(4); ~~G.S. 143B-350(f)(4) and located outside the municipality.~~

28 (c2) Distribution of State Funds Made Available by County or Municipal
29 Participation. – Any State or federal funds allocated to a project that are made available
30 by county or municipal participation in a project contained in the Transportation
31 Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding
32 region that the funding was allocated to under the distribution formula contained in
33 G.S. 136-17.2A.

34 (c3) Limitation on Agreements. – The Department shall not enter into any
35 agreement with a county or municipality to provide additional total funding for highway
36 construction in the county or municipality in exchange for county or municipal
37 participation in any project contained in the Transportation Improvement Program under
38 G.S. 143B-350(f)(4).

39 (d) Authorization to Participate in Development-Related Improvements. – When
40 in the review and approval by a ~~municipality~~ local government of plans for the
41 development of property abutting the State highway system it is determined by the
42 municipality that improvements to the State highway system are necessary to provide
43 for the safe and orderly movement of traffic, the ~~municipality~~ local government is
44 authorized to construct, or have constructed, said improvements to the State highway

1 system in vicinity of the development. For purposes of this section, improvements
2 include but are not limited to additional travel lanes, turn lanes, curb and gutter, and
3 drainage facilities. All improvements to the State highway system shall be constructed
4 in accordance with the specifications and requirements of the Department of
5 Transportation and be approved by the Department of Transportation.

6 (e) Authorization to Participate in Project Additions. – Pursuant to an agreement
7 with the Department of Transportation, a county or municipality may reimburse the
8 Department of Transportation for the cost of all improvements, including additional
9 right-of-way, for a street or highway improvement projects approved by the Board of
10 Transportation under G.S. 143B-350(f)(4), that are in addition to those improvements
11 that the Department of Transportation would normally include in the project.

12 (e1) Reimbursement Procedure. – Upon request of the county or municipality, the
13 Department of Transportation shall allow the ~~municipality~~ local government a period of
14 not less than three years from the date construction of the project is initiated to
15 reimburse the Department their agreed upon share of the costs necessary for the project.
16 The Department of Transportation shall not charge a ~~municipality~~ local government any
17 interest during the initial three years.

18 (f) Report to General Assembly. – The Department shall report in writing, on a
19 monthly basis, to the Joint Legislative Commission on Governmental Operations on all
20 agreements entered into between counties, municipalities and the Department of
21 Transportation. The report shall state in summary form the contents of such agreements.

22 (g) ~~Municipal-Local Government~~ Acquisition of Rights-of-Way. – In the
23 acquisition of rights-of-way for any State highway system street or ~~highway in or~~
24 ~~around a municipality~~, highway, the county or municipality shall be vested with the
25 same authority to acquire such rights-of-way as is granted to the Department of
26 Transportation in this Chapter. In the acquisition of such rights-of-way, counties and
27 municipalities may use the procedures provided in Article 9 of this Chapter, and
28 wherever the words "Department of Transportation" appear in Article 9 they shall be
29 deemed to include "county," "municipality" or ~~municipal-local~~ governing body, and
30 wherever the words "Administrator," "Administrator of Highways," "Administrator of
31 the Department of Transportation," or "Chairman of the Department of Transportation"
32 appear in Article 9 they shall be deemed to include "county or municipal clerk". It is the
33 intention of this subsection that the powers herein granted to municipalities for the
34 purpose of acquiring rights-of-way shall be in addition to and supplementary to those
35 powers granted in any local act or in any other general statute, and in any case in which
36 the provisions of this subsection or Article 9 of this Chapter are in conflict with the
37 provisions of any local act or any other provision of any general statute, then the
38 governing body of the county or municipality may in its discretion proceed in
39 accordance with the provisions of such local act or other general statute, or, as an
40 alternative method of procedure, in accordance with the provisions of this subsection
41 and Article 9 of this Chapter.

42 (h) Department Authority Concerning Rights-of-Way. – In the absence of an
43 agreement, the Department of Transportation shall retain authority to pay the full cost of

1 acquiring rights-of-way where the proposed project is deemed important to a
2 coordinated State highway system.

3 (i) Changes to Municipal-Local Government Participation Agreement. – Either
4 the municipality-local government or the Department of Transportation may at any time
5 propose changes in the agreement setting forth their respective responsibilities by giving
6 notice to the other party, but no change shall be effective until it is adopted by both the
7 municipal governing body and the Department of Transportation.

8 (j) Municipality-Local Governments Party to Rights-of-Way Proceeding. – Any
9 municipality that agrees to contribute any part of the cost of acquiring rights-of-way for
10 any State highway system street or highway shall be a proper party in any proceeding in
11 court relating to the acquisition of such rights-of-way.

12 ~~(k) Specified County Participation. – In addition to the authority given to Burke,~~
13 ~~Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these~~
14 ~~counties are authorized to participate in State highway improvement projects located~~
15 ~~anywhere in each respective county in accordance with this section."~~

16 SECTION 7. G.S. 136-98 reads as rewritten:

17 "**§ 136-98. Counties authorized to participate in costs of road construction and**
18 **maintenance; maintenance, participation is voluntary.**

19 (a) Repealed by Session Laws 2007-428, s. 4, effective August 23, 2007.

20 (b) Nothing in this Article prohibits counties from establishing service districts
21 for road maintenance under Part 1, Article 16 of Chapter 153A of the General Statutes.

22 (c) A county is authorized to participate in the cost of rights-of-way,
23 construction, reconstruction, improvement, or maintenance of a road on the State
24 highway system under agreement with the Department of Transportation. County
25 participation in improvements to the State highway system is voluntary. The
26 Department shall not transfer any of its responsibilities to counties without specific
27 statutory authority."

28 SECTION 8. This act is effective when it becomes law.

PUBLIC BILL

title change

Proposed Committee Substitute For
H.B. 2720

SESSION LAW

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION AND THE DEPARTMENT OF
TRANSPORTATION TO ACQUIRE ONLY NEW PASSENGER MOTOR VEHICLES THAT HAVE A
FUEL ECONOMY THAT IS IN THE TOP FIFTEEN PERCENT OF THAT CLASS OF COMPARABLE
AUTOMOBILES.

Introduced by Representative(s): Thomas
Harrison + Martin (Primary Sponsors)

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only
The Committee on Energy Energy
Efficiency
a majority being present, having considered
this bill, recommend that it do ✓ pass.

Rep Harrison
For the Committee
and be re-referred to appropriations

FAVORABLE TO COMM. SUB
UNFAVORABLE TO BILL

JUN 13 2008

AND PLACED ON
CALENDAR FOR

re-referred to
Appropriations

TITLE CHANGE

Referred to Committee/Subcommittee
on Gen. Govt
JUN 24 '08

ON MOTION OF
REP. DWINE
WITHDRAWN FROM
App. Sub Gen. Govt.
JUN 25 2008
Calendar
RECOMMENDED TO
pursuant 366

6-26-08
On motion of Rep. Thomas
POSTPONED
UNTIL 6-30-08

JUN 26 2008

On motion of Rep. Thomas
POSTPONED
UNTIL 7-1-08

JUN 30 2008

On motion of Rep. Thomas
POSTPONED
UNTIL 7-7-08

63-46 EV VII
PASSED 2nd & 3rd
READING

JUL 3 2008

ORDERED SENT TO SENATE

Special Message

Seven Weeks
RECEIVED

JUL 3 2008

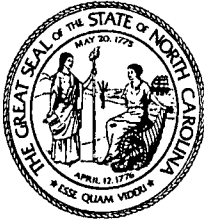
From House of Representatives
By Clerk 12:58 AM/PM

PASSED 1st READING

JUL 3 - 2008

AND REFERRED TO COMMITTEE
ON Comm. Small Bus.

The Committee on Appropriations
refers the bill to the Subcommittee on
General Government
Reps. Michaux, Adams, Alexander,
Crawford, Haire, Jeffus, Tolson, and Yongue.



HOUSE BILL 2720: Energy-Efficient State Motor Vehicle Fleets

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 9, 2008
Introduced by:	Reps. Thomas, Harrison, Martin	Summary by:	O. Walker Reagan
Version:	PCS to Second Edition H2720-CSTB-24		Committee Co-Counsel Denise Huntley Research Assistant

SUMMARY: *The Proposed Senate Committee Substitute for House Bill 2720 would require the Department of Administration to give preference to new passenger motor vehicles purchased by the State that have a fuel economy that is in the top fifteen percent of that class of comparable automobiles.*

CURRENT LAW: Current law does not require the Department of Administration to consider fuel economy during the acquisition of new passenger motor vehicles.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 2720 would require the Department of Administration to give preference in its requests for proposals for new passenger motor vehicles to be purchased that have a fuel economy for the new vehicle's model year that is in the top fifteen percent (15%) of its class of comparable automobiles.

The bill defines the terms "fuel economy" and "class of comparable automobiles" by reference to the Code of Federal Regulations. It also clarifies that the term "passenger motor vehicle" has the same meaning as "private passenger vehicle" as defined in G.S. 20-4.01.

The new passenger motor vehicle acquisition requirements that are proposed by this bill do not apply to vehicles used in law enforcement, emergency medical response, and firefighting.

The bill would require the Department of Administration to prepare an annual report for the previous fiscal year beginning October 1, 2010 that includes:

- The number of new passenger motor vehicles that are purchased under this act.
- The savings or costs for the purchase of vehicles to comply with this act.
- The quantity and cost of fuel saved.

The Department of Administration is to report annually to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission.

EFFECTIVE DATE: The bill would become effective July 1, 2009 and applies to contracts to purchase passenger motor vehicles entered into on or after that date.

Jennifer Munt, Legislative Analyst to the House Energy and Energy Efficiency Committee, substantially contributed to this summary.

H2720e2-SMRU-CSTB-24

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2720

Committee Substitute Favorable 6/18/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2720-CSTB-24 [v.4]

7/8/2008 8:55:50 PM

Short Title: Energy-Efficient State Motor Vehicle Fleet.

(Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO GIVE PREFERENCE TO NEW PASSENGER MOTOR VEHICLES THAT HAVE A FUEL ECONOMY THAT IS IN THE TOP FIFTEEN PERCENT OF THAT CLASS OF COMPARABLE AUTOMOBILES FOR PASSENGER MOTOR VEHICLES PURCHASED BY THE STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-341(8) reads as rewritten:

"(8) General Services:

...

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

2a. Every new motor vehicle transferred to or purchased by the Department that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in

1 G.S. 143-58.4. This sub-sub-subdivision does not apply
2 if the intended use, as determined by the Department, of
3 the new motor vehicle requires a type of vehicle for
4 which an express manufacturer's warranty allows the use
5 of B-20 fuel is not available.

6 2b. As used in this sub-sub-subdivision, "fuel economy" and
7 "class of comparable automobiles" have the same
8 meaning as in Part 600 of Title 40 of the Code of Federal
9 Regulations (July 1, 2007 Edition). As used in this
10 sub-sub-subdivision, "passenger motor vehicle" has the
11 same meaning as "private passenger vehicle" as defined
12 in G.S. 20-4.01. Notwithstanding the requirements of
13 sub-sub-subdivision 2a. of this sub-subdivision, every
14 request for proposals for new passenger motor vehicles
15 to be purchased by the Department shall state a
16 preference for vehicles that have a fuel economy for the
17 new vehicle's model year that is in the top fifteen percent
18 (15%) of its class of comparable automobiles. The
19 award for every new passenger motor vehicle that is
20 purchased by the Department shall be based on the
21 Department's evaluation of the best value for the State,
22 taking into account fuel economy ratings and life cycle
23 cost that reasonably considers both projected fuel costs
24 and acquisition costs. This sub-sub-subdivision does not
25 apply to vehicles used in law enforcement, emergency
26 medical response, and firefighting. The Department shall
27 report the number of new passenger motor vehicles that
28 are purchased as required by this sub-sub-subdivision,
29 the savings or costs for the purchase of vehicles to
30 comply with this sub-sub-subdivision, and the quantity
31 and cost of fuel saved for the previous fiscal year on or
32 before October 1 of each year to the Joint Legislative
33 Commission on Governmental Operations and the
34 Environmental Review Commission.

35 2a-2c. To participate in the energy credit banking and selling
36 program under G.S. 143-58.4. The Division of Motor
37 Fleet Management of the Department of Administration
38 is eligible to receive proceeds from the Alternative Fuel
39 Revolving Fund under G.S. 143-58.5 to purchase
40 alternative fuel, develop alternative fuel refueling
41 infrastructure, or purchase AFVs as defined in
42 G.S. 143-58.4.
43

...."

1 **SECTION 2.** The first report required under G.S. 143-34(8)i.2b. shall be due
2 on or before October 1, 2010.

3 **SECTION 3.** This act becomes effective July 1, 2009 and applies to
4 contracts to purchase passenger motor vehicles on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2720

S. B. No. _____

COMMITTEE SUBSTITUTE H2720-CSTB-24

DATE 7-9-08

Amendment No. #1

(to be filled in by
Principal Clerk)

Rep.) FORRESTER

Sen.)

1 moves to amend the bill on page 1, line 4

2 () WHICH CHANGES THE TITLE

3 by DELETING THE WORDS "TOP FIFTEEN PERCENT" AND

4 SUBSTITUTING THE WORDS "TOP FIFTY PERCENT"; AND

5 _____

6 ON PAGE 2, LINES 17 AND 18

7 BY DELETING THE WORDS "FIFTEEN PERCENT (15%)"

8 AND SUBSTITUTING THE WORDS "FIFTY PERCENT (50%)".

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

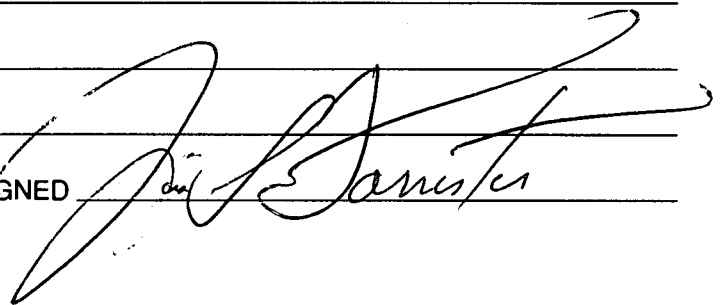
16 _____

17 _____

18 _____

19 _____

SIGNED



ADOPTED X FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

H

D

HOUSE BILL 2720

Committee Substitute Favorable 6/18/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H2720-PCS60547-TB-24

Short Title: Energy-Efficient State Motor Vehicle Fleet.

(Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO GIVE PREFERENCE TO NEW PASSENGER MOTOR VEHICLES THAT HAVE A FUEL ECONOMY THAT IS IN THE TOP FIFTY PERCENT OF THAT CLASS OF COMPARABLE AUTOMOBILES FOR PASSENGER MOTOR VEHICLES PURCHASED BY THE STATE.

The General Assembly of North Carolina enacts:

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...

i. To establish and operate a central motor pool and such subsidiary related facilities as the Secretary may deem necessary, and to that end:

1. To establish and operate central facilities for the maintenance, repair, and storage of state-owned passenger motor vehicles for the use of State agencies; to utilize any available State facilities for that purpose; and to establish such subsidiary facilities as the Secretary may deem necessary.

2. To acquire passenger motor vehicles by transfer from other State agencies and by purchase. All motor vehicles transferred to or purchased by the Department shall become part of a central motor pool.

2a. Every new motor vehicle transferred to or purchased by the Department that is designed to operate on diesel fuel shall be covered by an express manufacturer's warranty that allows the use of B-20 fuel, as defined in

1 G.S. 143-58.4. This sub-sub-subdivision does not apply
2 if the intended use, as determined by the Department, of
3 the new motor vehicle requires a type of vehicle for
4 which an express manufacturer's warranty allows the use
5 of B-20 fuel is not available.

6 2b. As used in this sub-sub-subdivision, "fuel economy" and
7 "class of comparable automobiles" have the same
8 meaning as in Part 600 of Title 40 of the Code of Federal
9 Regulations (July 1, 2007 Edition). As used in this
10 sub-sub-subdivision, "passenger motor vehicle" has the
11 same meaning as "private passenger vehicle" as defined
12 in G.S. 20-4.01. Notwithstanding the requirements of
13 sub-sub-subdivision 2a. of this sub-subdivision, every
14 request for proposals for new passenger motor vehicles
15 to be purchased by the Department shall state a
16 preference for vehicles that have a fuel economy for the
17 new vehicle's model year that is in the top fifty percent
18 (50%) of its class of comparable automobiles. The award
19 for every new passenger motor vehicle that is purchased
20 by the Department shall be based on the Department's
21 evaluation of the best value for the State, taking into
22 account fuel economy ratings and life cycle cost that
23 reasonably consider both projected fuel costs and
24 acquisition costs. This sub-sub-subdivision does not
25 apply to vehicles used in law enforcement, emergency
26 medical response, and firefighting. The Department shall
27 report the number of new passenger motor vehicles that
28 are purchased as required by this sub-sub-subdivision,
29 the savings or costs for the purchase of vehicles to
30 comply with this sub-sub-subdivision, and the quantity
31 and cost of fuel saved for the previous fiscal year on or
32 before October 1 of each year to the Joint Legislative
33 Commission on Governmental Operations and the
34 Environmental Review Commission.

35 2a.2c. To participate in the energy credit banking and selling
36 program under G.S. 143-58.4. The Division of Motor
37 Fleet Management of the Department of Administration
38 is eligible to receive proceeds from the Alternative Fuel
39 Revolving Fund under G.S. 143-58.5 to purchase
40 alternative fuel, develop alternative fuel refueling
41 infrastructure, or purchase AFVs as defined in
42 G.S. 143-58.4.

43"

1 **SECTION 2.** The first report required under G.S. 143-34(8)i.2b. shall be due
2 on or before October 1, 2010.

3 **SECTION 3.** This act becomes effective July 1, 2009, and applies to
4 contracts to purchase passenger motor vehicles on or after that date.

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, July 10, 2008

Senator SOLES, 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) 1134	Cleanup of Abandoned Manufactured Homes.
	Draft Number: PCS10495
	Sequential Referral: None
	Recommended Referral: Finance
	Long Title Amended: No

TOTAL REPORTED: 1

Committee Clerk Comments:

Janet D. Smith

A BILL TO BE ENTITLED

AN ACT TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT BY ENCOURAGING COUNTIES TO DEVELOP PLANS THAT PROVIDE FOR THE DECONSTRUCTION OF ABANDONED MANUFACTURED HOMES AND THE REMOVAL OF REUSABLE OR RECYCLABLE COMPONENTS, BY PROVIDING FOR THE ABATEMENT OF ABANDONED MANUFACTURED HOMES THAT ARE DETERMINED TO BE A NUISANCE, AND TO DESIGNATE THAT A PORTION OF THE SOLID WASTE MANAGEMENT TRUST FUND BE USED TO FUND THE DECONSTRUCTION AND REMOVAL OF ABANDONED MANUFACTURED HOMES.

Introduced by Representative(s): *Hume, Allen, Tolson, Justice (Primary Sponsors)*

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

Principal Clerk's Use Only
The Committee on Finance
Majority being present having considered
this bill, recommend that it do ☒ pass.
Reps. Luebke, Gibson, Wainwright and Weiss
For the Committee

FAVORABLE TO COMM. SUB *#2*
UNFAVORABLE TO BILL *C-S-#1*

JUN 30 2008

AND PLACED ON *TITLE CHANGE*
CALENDAR FOR *7-2-08*
366

PASSED 2nd READING
Ayes 100 Nays 18
JUL 2 2008
AND PLACED ON THE
CALENDAR

Passed 2nd Reading
104-3 EV
JUL 3 2008
AND ORDERED ENGROSSED
AND SENT TO SENATE

Special Message

Hume Allen

RECEIVED

JUL 3 2008

From House of Representatives
By Clerk *AP 4:16 AM PM*

PASSED 1st READING
JUL 3 - 2008
AND REFERRED TO COMMITTEE
ON *Comm. Small*

Bus + Entrepreneurship

MEMO NO. *1*
ADOPTED *107-02*
03 2008

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

4

HOUSE BILL 1134
Committee Substitute Favorable 6/18/08
Committee Substitute #2 Favorable 6/30/08
Fourth Edition Engrossed 7/3/08

Short Title: Cleanup of Abandoned Manufactured Homes.

(Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT BY ENCOURAGING COUNTIES TO DEVELOP PLANS THAT PROVIDE FOR THE DECONSTRUCTION OF ABANDONED MANUFACTURED HOMES AND THE REMOVAL OF REUSABLE OR RECYCLABLE COMPONENTS, BY PROVIDING FOR THE ABATEMENT OF ABANDONED MANUFACTURED HOMES THAT ARE DETERMINED TO BE A NUISANCE, AND TO DESIGNATE THAT A PORTION OF THE SOLID WASTE MANAGEMENT TRUST FUND BE USED TO FUND THE DECONSTRUCTION AND REMOVAL OF ABANDONED MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2F. Management of Abandoned Manufactured Homes.

"§ 130A-309.99A. Findings; purpose.

(a) The General Assembly finds that:

- (1) The number of manufactured homes in North Carolina has risen dramatically as land has become scarce and the housing market has become more expensive.
- (2) Manufactured homes may be difficult and expensive to repair when they begin to deteriorate. Often consumers simply buy another manufactured home unit rather than refurbish a manufactured home that needs repair.
- (3) According to data obtained through the 2000 United States Census, there are more than 80,000 vacant manufactured homes in North Carolina, of which 40,000 are estimated to be permanently untended or in need of extensive repair.

- (4) Abandoned manufactured homes create public health and environmental problems and are a visual blight on the landscape of North Carolina. Further, an abandoned manufactured home poses a fire hazard, a safety hazard to unsupervised children, and is a potential source of toxic or hazardous materials that may escape into the environment. As a result, abandoned manufactured homes constitute a nuisance.
- (5) Most landfills will not accept intact manufactured homes due to their bulky nature. In those instances where landfills do accept intact manufactured homes for disposal, the cost of disposal can be prohibitive for many manufactured homeowners. Landfill disposal costs include tipping fees, the costs of transporting the obsolete structures to the landfill, and the costs of removing any hazardous materials, such as asbestos and other harmful chemicals.
- (6) Many components of manufactured homes can be reused or recycled, including windows, screens, doors, copper tubing, copper wiring, aluminum, tin, steel, lumber, steel frames, pipes, countertops, cabinets, and other appliances and fixtures. It is estimated that twenty-six percent (26%) to thirty-eight percent (38%) of the components of a manufactured home can be reused or recycled without extensive manual labor.
- (7) It is desirable to allow units of local government to manage the disposal of abandoned manufactured homes for themselves and to encourage regional approaches to the deconstruction of abandoned manufactured homes, the removal of components from abandoned manufactured homes that are reusable or recyclable, and the proper disposal of the remainder, including mercury switches from thermostats.
- (8) It is in the State's best interest to encourage the reduction of the volume of intact manufactured homes being disposed of at public sanitary landfills, to encourage the deconstruction of abandoned manufactured homes, the removal of components from abandoned manufactured homes that are reusable or recyclable, and to encourage the proper disposal of the remainder, including mercury switches from thermostats.

(b) The purpose of this Part is to provide units of local government with the authority, funding, and guidance needed to provide for the efficient and proper identification, deconstruction, recycling, and disposal of abandoned manufactured homes in this State.

"§ 130A-309.99B. Definitions.

The following definitions apply to this Part:

- (1) 'Abandoned manufactured home' means a manufactured home or mobile classroom that is both:
- a. Vacant or in need of extensive repair.

b. An unreasonable danger to public health, safety, welfare, or the environment.

(2) 'Intact' when used in connection with 'abandoned manufactured home' means an abandoned manufactured home from which the wheels and axles, white goods, and recyclable materials have not been removed.

(3) 'Manufactured home' is defined in G.S. 105-187.60.

(4) 'Responsible party' means any person or entity that possesses an ownership interest in an abandoned manufactured home.

"§ 130A-309.99C. Management of abandoned manufactured homes.

(a) Plan. – Each county shall consider whether to implement a program for the management of abandoned manufactured homes. If, after consideration, the county decides not to implement a program, the county must state in the comprehensive solid waste management plan that it is required to develop under G.S. 130A-309.09A(b) that the county considered whether to implement a program for the management of abandoned manufactured homes and decided not to do so. A county may, at any time, reconsider its decision not to implement a program for the management of abandoned manufactured homes. If the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured homes and include the plan as a component of the comprehensive solid waste management plan it is required to develop under G.S. 130A-309.09A(b). At a minimum, the plan shall include:

(1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured homeowners or other responsible parties may request designation of their home as an abandoned manufactured home.

(2) A plan for the deconstruction of these abandoned manufactured homes.

(3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.

(4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection.

(b) Authority to Contract. – A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of abandoned manufactured homes within the county and the implementation of its plan under subsection (a) of this section.

(c) Fee Authority. – A unit of local government or a party that contracted with the county under subsection (b) of this section may charge a disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part.

(d) An intact abandoned manufactured home shall not be disposed of in a landfill.

"§ 130A-309.99D. Process for the disposal of abandoned manufactured homes.

1 (a) If a county adopts and implements a plan for the management of abandoned
2 manufactured homes pursuant to this Part, the county shall notify the responsible party
3 for each identified abandoned manufactured home in the county that the abandoned
4 manufactured home must be properly disposed of by that person within 90 days. The
5 notice shall be in writing and shall be served on the person as provided by Rule 4(j) of
6 the Rules of Civil Procedure, G.S. 1A-1. The notice shall disclose the basis for the
7 action and advise that a hearing will be held before a designated public officer at a place
8 within the county in which the manufactured home is located not less than 10 days nor
9 more than 30 days after the serving of the notice; that the responsible party shall be
10 given the right to file an answer to the order and to appear in person, or otherwise, and
11 give testimony at the place and time fixed in the notice; and that the rules of evidence
12 prevailing in courts of law or equity shall not be controlling in hearings before the
13 public officer.

14 (b) If, after notice and hearing, the public officer determines that the
15 manufactured home under consideration is abandoned, the officer shall state in writing
16 the officer's findings of fact in support of that determination, and the county shall order
17 the person to dispose of the abandoned manufactured home within 90 days of the
18 expiration of this period. If the responsible party fails to comply with this order, the
19 county shall take any action it deems reasonably necessary to dispose of the abandoned
20 manufactured home, including entering the property where the abandoned manufactured
21 home is located and arranging to have the abandoned manufactured home deconstructed
22 and disposed of in a manner consistent with the plan developed under
23 G.S. 130A-309.92(a). If the responsible party is not the owner of the property on which
24 the abandoned manufactured home is located, the county may order the property owner
25 to permit entry onto the owner's property by an appropriate party to permit the removal
26 and proper disposal of the abandoned manufactured home.

27 (d) This section does not apply to any of the following:

- 28 (1) A retail business premises where manufactured homes are sold.
29 (2) A solid waste disposal facility where no more than 10 manufactured
30 homes are stored at one time if all of the manufactured homes received
31 for storage are deconstructed or removed from the facility within one
32 year after receipt.

33 (e) This section does not change the existing authority of a county or a
34 municipality to enforce any existing laws or of any person to abate a nuisance.

35 **"§ 130A-309.99E. Grants to local governments.**

36 (a) The Department shall use funds from the Solid Waste Trust Fund established
37 by G.S. 130A-309.12 to:

- 38 (1) Provide grants to counties to reimburse their expenses for activities
39 under this Part.
40 (2) Provide technical assistance and support to counties to achieve the
41 purposes of this Part.
42 (3) Implement this Part, including costs associated with staffing, training,
43 submitting reports, and fulfilling program goals.

1 (b) Each county that requests a reimbursement grant from the Department shall
2 also submit to the Department a proposed budget specifying in detail the expenses it
3 expects to incur in a specified time period in connection with the activities under this
4 Part. The Department shall review each submitted budget and make modifications, if
5 necessary, in light of the availability of funds, the county's capacity to effectively and
6 efficiently manage the abatement of abandoned manufactured homes, and any other
7 factors that the Department reasonably determines are relevant. When the Department
8 and a county agree on the amount of the county's budget under this subsection, the
9 Department and the county shall execute an agreement that reflects this amount and that
10 specifies the time period covered by the agreement, and the Department shall reserve
11 funds for the county in the amount necessary to reimburse allowable costs. The amount
12 of a reimbursement grant shall be calculated in accordance with subsections (c) and (d)
13 of this section. A county shall not receive a reimbursement grant unless it has filed all
14 the annual reports it is required to submit under G.S. 130A-309.96.

15 (c) Reimbursement grants shall be made in accordance with the terms of the
16 grant agreement developed pursuant to subsection (b) of this section, but in any event,
17 all reimbursements shall be calculated on a per-unit basis and based on the actual cost of
18 such activities, not to exceed one thousand dollars (\$1,000) for each unit. For a county
19 designated as a development tier one or two area pursuant to G.S. 143B-437.08 where
20 the costs associated with the disposition of an abandoned manufactured home in a
21 manner consistent with this Part exceed one thousand dollars (\$1,000) per unit, a county
22 may request a supplemental grant in an amount equal to fifty percent (50%) of the
23 amount in excess of one thousand dollars (\$1,000). The Department shall consider the
24 efficiency and effectiveness of the county program in making the supplemental grant,
25 and the county participation must be a cash match.

26 (d) A county shall use reimbursement grant funds only for operating expenses
27 that are directly related to the management of abandoned manufactured homes. If an
28 operating expense is partially related to the management of abandoned manufactured
29 homes, a county may use the reimbursement grant funds to finance the percentage of the
30 cost that equals the percentage of the expense that is directly related to the management
31 of abandoned manufactured homes.

32 **"§ 130A-309.99F. Authority to adopt ordinances.**

33 A county, or a unit of local government that is delegated authority to do so by the
34 county, may adopt ordinances it deems necessary in order to implement this Part.

35 **"§ 130A-309.99G. Reporting on the management of abandoned manufactured**
36 **homes.**

37 (a) On or before 1 August of each year, any county that receives a reimbursement
38 grant under G.S. 130A-309.94 shall submit a report to the Department that includes all
39 of the following information:

- 40 (1) The number of units and approximate tonnage of abandoned
41 manufactured homes removed, deconstructed, recycled, and disposed
42 of during the previous fiscal year.

- (2) A detailed statement of the county's abandoned manufactured homes account receipts and disbursements during the previous fiscal year that sets out the source of all receipts and the purpose of all disbursements.
- (3) The obligated and unobligated balances in the county's abandoned manufactured homes account at the end of the fiscal year.
- (4) An assessment of the county's progress in removing, deconstructing, recycling, and disposing of abandoned manufactured homes consistent with this Part.

(b) The Department shall include in its annual report to the Environmental Review Commission under G.S. 130A-309.06(c) a description of the management of abandoned manufactured homes in the State for the fiscal year ending the preceding 30 June. The description of the management of abandoned manufactured homes shall include all of the following information:

- (1) The cost to each county of managing its abandoned manufactured home program during the reporting period.
- (2) The beginning and ending balances of the Solid Waste Management Trust Fund for the reporting period and a list of grants made from the Fund for the period, itemized by county.
- (3) A summary of the information contained in the reports submitted by counties pursuant to subsection (a) of this section.
- (4) Any other information the Department considers helpful in understanding the problem of managing abandoned manufactured homes in the State.

"§ 130A-309.99H. Effect on local ordinances.

This Part shall not be construed to limit the authority of counties under Article 18 of Chapter 153A of the General Statutes or the authority of cities under Article 19 of Chapter 160A of the General Statutes."

SECTION 2. G.S. 130A-309.06(c) is amended by adding a new subdivision to read:

- "(14) A description of the activities related to the management of abandoned manufactured homes in the State in accordance with G.S. 130A-309.96, the beginning and ending balances in the Solid Waste Management Trust Fund for the reporting period and the amount of funds used, itemized by county, for grants made under Part 2E of Article 9 of Chapter 130A of the General Statutes."

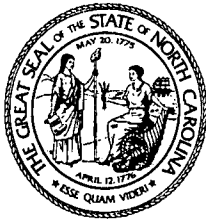
SECTION 3. G.S. 130A-309.09A(b) is amended by adding a new subdivision to read:

- "(9) Include as a component a written plan for the management of abandoned manufactured homes as required under G.S. 130A-309.92(a)."

SECTION 4. The Department of Environment and Natural Resources shall annually use up to one million dollars (\$1,000,000) from the Solid Waste Management Trust Fund established by G.S. 130A-309.12 in order to fund the cleanup of abandoned mobile homes as provided in G.S. 130A-309.99E.

1 **SECTION 5.** A county designated as a development tier one or two area
2 pursuant to G.S. 143B-437.08 may, upon resolution by the Board of Commissioners of
3 their intent to (i) develop a plan for the management of abandoned manufactured homes
4 and (ii) implement the plan once developed, request a planning grant of up to two
5 thousand five hundred dollars (\$2,500) from the Solid Waste Management Trust Fund.
6 These funds shall be used by the county to prepare a plan as provided in
7 G.S. 130A-309.99C, as enacted by Section 1 of this act, and to identify abandoned
8 manufactured homes.

9 **SECTION 6.** This act becomes effective 1 March 2009 and expires 1
10 October 2023.



HOUSE BILL 1134: Cleanup of Abandoned Manufactured Homes

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 8, 2008
Introduced by:	Reps. Haire, Allen, Tolson, Justice	Summary by:	Tim Hovis*
Version:	H1134-CSRI-48[v.3]		Committee Counsel

SUMMARY: *House Bill 1134 creates a new Part in the General Statutes to govern the management of abandoned manufactured homes. The bill (i) directs each county to consider whether to implement a program to manage these homes; (ii) establishes minimum plan requirements for counties that opt to implement programs; (iii) establishes a process for disposal of these homes by counties; (iv) prohibits disposal of intact abandoned manufactured homes in landfills; and (v) directs that up to \$1,000,000 from the Solid Waste Trust Fund be used in order to provide grants to counties for the cleanup of abandoned manufactured homes.*

BILL ANALYSIS: House Bill 1134 creates a new Part 2F in Article 9 of Chapter 130A of the General Statutes to govern the management of abandoned manufactured homes. An abandoned manufactured home is defined as a manufactured home or mobile classroom that is both (i) vacant or in need of extensive repair, and (ii) an unreasonable danger to public health, safety, welfare, or the environment. Each county must consider whether to implement a program to manage these homes. The decision to implement a program is, however, voluntary.

For counties that opt to implement a program, the bill:

- Provides that the county must include a written plan as a component of its solid waste management plan required under the General Statutes. Plans must include methods for the following: (1) the identification of abandoned homes; (2) a plan for deconstruction of the home; (3) a plan for the removal of deconstructed components, including mercury switches from thermostats, for reuse or recycling as appropriate; and (4) a plan for the disposal of homes that are not deconstructed.
- Establishes a process for disposal of these homes by counties. The county must give written notice to the responsible party (any person that possesses an ownership interest in the home) that (i) the home must be properly disposed of within 90 days, and (ii) a hearing on the matter will be held before a designated public officer. If, after notice and hearing, the hearing officer determines that the home is abandoned the county must order the responsible party to dispose of the home within 90 days. If the responsible party does not comply with the order, the county is authorized to take action to deconstruct and dispose of the home properly. The responsible party or parties would then be joint and severally liable to the county for costs incurred for its abatement activities, less the amount of any reimbursement grants received by the county.
- Directs the Department of Environment and Natural Resources to use funds from the Solid Waste Trust Fund to provide grants to counties to reimburse their expenses incurred to deconstruct and dispose of abandoned manufactured homes and to provide technical assistance and reimbursement for staffing and training costs. Reimbursement would generally be limited to \$1,000 per unit.

The bill also:

- Prohibits disposal of an intact abandoned manufactured home in a landfill.
- Directs up to \$1,000,000 from the Solid Waste Management Trust Fund to be used in order to provide grants to counties for the cleanup of abandoned manufactured homes (see information on grants above).
- Directs any county receiving a reimbursing grant to report to the Department of Environment and Natural

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2007

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HOUSE BILL 1134

Committee Substitute Favorable 6/18/08

Committee Substitute #2 Favorable 6/30/08

Fourth Edition Engrossed 7/3/08

PROPOSED SENATE COMMITTEE SUBSTITUTE H1134-CSRI-48 [v.3]

7/8/2008 6:30:52 PM

Short Title: Cleanup of Abandoned Manufactured Homes.

(Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT BY ENCOURAGING COUNTIES TO DEVELOP PLANS THAT PROVIDE FOR THE DECONSTRUCTION OF ABANDONED MANUFACTURED HOMES AND THE REMOVAL OF REUSABLE OR RECYCLABLE COMPONENTS, BY PROVIDING FOR THE ABATEMENT OF ABANDONED MANUFACTURED HOMES THAT ARE DETERMINED TO BE A NUISANCE, AND TO DESIGNATE THAT A PORTION OF THE SOLID WASTE MANAGEMENT TRUST FUND BE USED TO FUND THE DECONSTRUCTION AND REMOVAL OF ABANDONED MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2F. Management of Abandoned Manufactured Homes.

"§ 130A-309.99A. Findings; purpose.

(a) The General Assembly finds that:

- (1) The number of manufactured homes in North Carolina has risen dramatically as land has become scarce and the housing market has become more expensive.
- (2) Manufactured homes may be difficult and expensive to repair when they begin to deteriorate. Often consumers simply buy another manufactured home unit rather than refurbish a manufactured home that needs repair.
- (3) According to data obtained through the 2000 United States Census, there are more than 80,000 vacant manufactured homes in North

Carolina, of which 40,000 are estimated to be permanently untended or in need of extensive repair.

(4) Abandoned manufactured homes create public health and environmental problems and are a visual blight on the landscape of North Carolina. Further, an abandoned manufactured home poses a fire hazard, a safety hazard to unsupervised children, and is a potential source of toxic or hazardous materials that may escape into the environment. As a result, abandoned manufactured homes constitute a nuisance.

(5) Most landfills will not accept intact manufactured homes due to their bulky nature. In those instances where landfills do accept intact manufactured homes for disposal, the cost of disposal can be prohibitive for many manufactured homeowners. Landfill disposal costs include tipping fees, the costs of transporting the obsolete structures to the landfill, and the costs of removing any hazardous materials, such as asbestos and other harmful chemicals.

(6) Many components of manufactured homes can be reused or recycled, including windows, screens, doors, copper tubing, copper wiring, aluminum, tin, steel, lumber, steel frames, pipes, countertops, cabinets, and other appliances and fixtures. It is estimated that twenty-six percent (26%) to thirty-eight percent (38%) of the components of a manufactured home can be reused or recycled without extensive manual labor.

(7) It is desirable to allow units of local government to manage the disposal of abandoned manufactured homes for themselves and to encourage regional approaches to the deconstruction of abandoned manufactured homes, the removal of components from abandoned manufactured homes that are reusable or recyclable, and the proper disposal of the remainder, including mercury switches from thermostats.

(8) It is in the State's best interest to encourage the reduction of the volume of intact manufactured homes being disposed of at public sanitary landfills, to encourage the deconstruction of abandoned manufactured homes, the removal of components from abandoned manufactured homes that are reusable or recyclable, and to encourage the proper disposal of the remainder, including mercury switches from thermostats.

(b) The purpose of this Part is to provide units of local government with the authority, funding, and guidance needed to provide for the efficient and proper identification, deconstruction, recycling, and disposal of abandoned manufactured homes in this State.

"§ 130A-309.99B. Definitions.

The following definitions apply to this Part:

- (1) 'Abandoned manufactured home' means a manufactured home or mobile classroom that is both:
a. Vacant or in need of extensive repair.
b. An unreasonable danger to public health, safety, welfare, or the environment.
- (2) 'Intact' when used in connection with 'abandoned manufactured home' means an abandoned manufactured home from which the wheels and axles, white goods, and recyclable materials have not been removed.
- (3) 'Manufactured home' is defined in G.S. 105-187.60.
- (4) 'Responsible party' means any person or entity that possesses an ownership interest in an abandoned manufactured home.

"§ 130A-309.99C. Management of abandoned manufactured homes.

(a) Plan. – Each county shall consider whether to implement a program for the management of abandoned manufactured homes. If, after consideration, the county decides not to implement a program, the county must state in the comprehensive solid waste management plan that it is required to develop under G.S. 130A-309.09A(b) that the county considered whether to implement a program for the management of abandoned manufactured homes and decided not to do so. A county may, at any time, reconsider its decision not to implement a program for the management of abandoned manufactured homes. If the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured homes and include the plan as a component of the comprehensive solid waste management plan it is required to develop under G.S. 130A-309.09A(b). At a minimum, the plan shall include:

- (1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured homeowners or other responsible parties may request designation of their home as an abandoned manufactured home.
- (2) A plan for the deconstruction of these abandoned manufactured homes.
- (3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.
- (4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection.

(b) Authority to Contract. – A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of abandoned manufactured homes within the county and the implementation of its plan under subsection (a) of this section.

(c) Fee Authority. – A unit of local government or a party that contracted with the county under subsection (b) of this section may charge a disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part.

1 (d) An intact abandoned manufactured home shall not be disposed of in a
2 landfill.

3 **"§ 130A-309.99D. Process for the disposal of abandoned manufactured homes.**

4 (a) If a county adopts and implements a plan for the management of abandoned
5 manufactured homes pursuant to this Part, the county shall notify the responsible party
6 for each identified abandoned manufactured home in the county that the abandoned
7 manufactured home must be properly disposed of by that person within 90 days. The
8 notice shall be in writing and shall be served on the person as provided by Rule 4(j) of
9 the Rules of Civil Procedure, G.S. 1A-1. The notice shall disclose the basis for the
10 action and advise that a hearing will be held before a designated public officer at a place
11 within the county in which the manufactured home is located not less than 10 days nor
12 more than 30 days after the serving of the notice; that the responsible party shall be
13 given the right to file an answer to the order and to appear in person, or otherwise, and
14 give testimony at the place and time fixed in the notice; and that the rules of evidence
15 prevailing in courts of law or equity shall not be controlling in hearings before the
16 public officer.

17 (b) If, after notice and hearing, the public officer determines that the
18 manufactured home under consideration is abandoned, the officer shall state in writing
19 the officer's findings of fact in support of that determination, and the county shall order
20 the person to dispose of the abandoned manufactured home within 90 days of the
21 expiration of this period. If the responsible party fails to comply with this order, the
22 county shall take any action it deems reasonably necessary to dispose of the abandoned
23 manufactured home, including entering the property where the abandoned manufactured
24 home is located and arranging to have the abandoned manufactured home deconstructed
25 and disposed of in a manner consistent with the plan developed under
26 G.S. 130A-309.99C(a). If the responsible party is not the owner of the property on
27 which the abandoned manufactured home is located, the county may order the property
28 owner to permit entry onto the owner's property by an appropriate party to permit the
29 removal and proper disposal of the abandoned manufactured home.

30 (c) When a county removes, deconstructs, and disposes of an abandoned
31 manufactured home pursuant to subsection (a) of this section, whether directly or
32 through a party that contracted with the county, the responsible party or the owner of the
33 property on whose land an abandoned manufactured home is located shall be joint and
34 severally liable for the actual costs incurred by the county, directly or indirectly, for its
35 abatement activities and its administrative and legal expenses incurred, less the amount
36 of grants for reimbursement received by the county under G.S. 130A-309.94(c) for the
37 disposal activities for that manufactured home. The county may initiate a civil action to
38 recover these unpaid costs from the responsible party or the owner of the property on
39 whose land an abandoned manufactured home is located. Nonpayment of any portion of
40 the actual costs incurred by the county shall result in the imposition of a lien on any real
41 property in the county owned by the responsible party or the owner of the property on
42 whose land the abandoned manufactured home is located.

43 (d) This section does not apply to any of the following:

44 (1) A retail business premises where manufactured homes are sold.

(2) A solid waste disposal facility where no more than 10 manufactured homes are stored at one time if all of the manufactured homes received for storage are deconstructed or removed from the facility within one year after receipt.

(e) This section does not change the existing authority of a county or a municipality to enforce any existing laws or of any person to abate a nuisance.

"§ 130A-309.99E. Grants to local governments.

(a) The Department shall use funds from the Solid Waste Trust Fund established by G.S. 130A-309.12 to:

(1) Provide grants to counties to reimburse their expenses for activities under this Part.

(2) Provide technical assistance and support to counties to achieve the purposes of this Part.

(3) Implement this Part, including costs associated with staffing, training, submitting reports, and fulfilling program goals.

(b) Each county that requests a reimbursement grant from the Department shall also submit to the Department a proposed budget specifying in detail the expenses it expects to incur in a specified time period in connection with the activities under this Part. The Department shall review each submitted budget and make modifications, if necessary, in light of the availability of funds, the county's capacity to effectively and efficiently manage the abatement of abandoned manufactured homes, and any other factors that the Department reasonably determines are relevant. When the Department and a county agree on the amount of the county's budget under this subsection, the Department and the county shall execute an agreement that reflects this amount and that specifies the time period covered by the agreement, and the Department shall reserve funds for the county in the amount necessary to reimburse allowable costs. The amount of a reimbursement grant shall be calculated in accordance with subsections (c) and (d) of this section. A county shall not receive a reimbursement grant unless it has filed all the annual reports it is required to submit under G.S. 130A-309.99G.

(c) Reimbursement grants shall be made in accordance with the terms of the grant agreement developed pursuant to subsection (b) of this section, but in any event, all reimbursements shall be calculated on a per-unit basis and based on the actual cost of such activities, not to exceed one thousand dollars (\$1,000) for each unit. For a county designated as a development tier one or two area pursuant to G.S. 143B-437.08 where the costs associated with the disposition of an abandoned manufactured home in a manner consistent with this Part exceed one thousand dollars (\$1,000) per unit, a county may request a supplemental grant in an amount equal to fifty percent (50%) of the amount in excess of one thousand dollars (\$1,000). The Department shall consider the efficiency and effectiveness of the county program in making the supplemental grant, and the county participation must be a cash match.

(d) A county shall use reimbursement grant funds only for operating expenses that are directly related to the management of abandoned manufactured homes. If an operating expense is partially related to the management of abandoned manufactured homes, a county may use the reimbursement grant funds to finance the percentage of the

1 cost that equals the percentage of the expense that is directly related to the management
2 of abandoned manufactured homes.

3 **"§ 130A-309.99F. Authority to adopt ordinances.**

4 A county, or a unit of local government that is delegated authority to do so by the
5 county, may adopt ordinances it deems necessary in order to implement this Part.

6 **"§ 130A-309.99G. Reporting on the management of abandoned manufactured**
7 **homes.**

8 (a) On or before 1 August of each year, any county that receives a reimbursement
9 grant under G.S. 130A-309.99E shall submit a report to the Department that includes all
10 of the following information:

- 11 (1) The number of units and approximate tonnage of abandoned
12 manufactured homes removed, deconstructed, recycled, and disposed
13 of during the previous fiscal year.
- 14 (2) A detailed statement of the county's abandoned manufactured homes
15 account receipts and disbursements during the previous fiscal year that
16 sets out the source of all receipts and the purpose of all disbursements.
- 17 (3) The obligated and unobligated balances in the county's abandoned
18 manufactured homes account at the end of the fiscal year.
- 19 (4) An assessment of the county's progress in removing, deconstructing,
20 recycling, and disposing of abandoned manufactured homes consistent
21 with this Part.

22 (b) The Department shall include in its annual report to the Environmental
23 Review Commission under G.S. 130A-309.06(c) a description of the management of
24 abandoned manufactured homes in the State for the fiscal year ending the preceding 30
25 June. The description of the management of abandoned manufactured homes shall
26 include all of the following information:

- 27 (1) The cost to each county of managing its abandoned manufactured
28 home program during the reporting period.
- 29 (2) The beginning and ending balances of the Solid Waste Management
30 Trust Fund for the reporting period and a list of grants made from the
31 Fund for the period, itemized by county.
- 32 (3) A summary of the information contained in the reports submitted by
33 counties pursuant to subsection (a) of this section.
- 34 (4) Any other information the Department considers helpful in
35 understanding the problem of managing abandoned manufactured
36 homes in the State.

37 **"§ 130A-309.99H. Effect on local ordinances.**

38 This Part shall not be construed to limit the authority of counties under Article 18 of
39 Chapter 153A of the General Statutes or the authority of cities under Article 19 of
40 Chapter 160A of the General Statutes."

41 **SECTION 2.** G.S. 130A-309.06(c) is amended by adding a new subdivision
42 to read:

- 43 "(14) A description of the activities related to the management of abandoned
44 manufactured homes in the State in accordance with

1 G.S. 130A-309.99G, the beginning and ending balances in the Solid
2 Waste Management Trust Fund for the reporting period and the
3 amount of funds used, itemized by county, for grants made under Part
4 2E of Article 9 of Chapter 130A of the General Statutes."

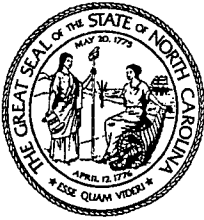
5 **SECTION 3.** G.S. 130A-309.09A(b) is amended by adding a new
6 subdivision to read:

7 "(9) Include as a component a written plan for the management of
8 abandoned manufactured homes as required under
9 G.S. 130A-309.99C(a)."

10 **SECTION 4.** The Department of Environment and Natural Resources shall
11 annually use up to one million dollars (\$1,000,000) from the Solid Waste Management
12 Trust Fund established by G.S. 130A-309.12 in order to fund the cleanup of abandoned
13 mobile homes as provided in G.S. 130A-309.99E.

14 **SECTION 5.** A county designated as a development tier one or two area
15 pursuant to G.S. 143B-437.08 may, upon resolution by the Board of Commissioners of
16 their intent to (i) develop a plan for the management of abandoned manufactured homes
17 and (ii) implement the plan once developed, request a planning grant of up to two
18 thousand five hundred dollars (\$2,500) from the Solid Waste Management Trust Fund.
19 These funds shall be used by the county to prepare a plan as provided in
20 G.S. 130A-309.99C, as enacted by Section 1 of this act, and to identify abandoned
21 manufactured homes.

22 **SECTION 6.** This act becomes effective 1 March 2009 and expires 1
23 October 2023.



HOUSE BILL 1134: Cleanup of Abandoned Manufactured Homes

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 8, 2008
Introduced by:	Reps. Haire, Allen, Tolson, Justice	Summary by:	Tim Hovis*
Version:	H1134-CSRI-48[v.3]		Committee Counsel

SUMMARY: *House Bill 1134 creates a new Part in the General Statutes to govern the management of abandoned manufactured homes. The bill (i) directs each county to consider whether to implement a program to manage these homes; (ii) establishes minimum plan requirements for counties that opt to implement programs; (iii) establishes a process for disposal of these homes by counties; (iv) prohibits disposal of intact abandoned manufactured homes in landfills; and (v) directs that up to \$1,000,000 from the Solid Waste Trust Fund be used in order to provide grants to counties for the cleanup of abandoned manufactured homes.*

BILL ANALYSIS: House Bill 1134 creates a new Part 2F in Article 9 of Chapter 130A of the General Statutes to govern the management of abandoned manufactured homes. An abandoned manufactured home is defined as a manufactured home or mobile classroom that is both (i) vacant or in need of extensive repair, and (ii) an unreasonable danger to public health, safety, welfare, or the environment. Each county must consider whether to implement a program to manage these homes. The decision to implement a program is, however, voluntary.

For counties that opt to implement a program, the bill:

- Provides that the county must include a written plan as a component of its solid waste management plan required under the General Statutes. Plans must include methods for the following: (1) the identification of abandoned homes; (2) a plan for deconstruction of the home; (3) a plan for the removal of deconstructed components, including mercury switches from thermostats, for reuse or recycling as appropriate; and (4) a plan for the disposal of homes that are not deconstructed.
- Establishes a process for disposal of these homes by counties. The county must give written notice to the responsible party (any person that possesses an ownership interest in the home) that (i) the home must be properly disposed of within 90 days, and (ii) a hearing on the matter will be held before a designated public officer. If, after notice and hearing, the hearing officer determines that the home is abandoned the county must order the responsible party to dispose of the home within 90 days. If the responsible party does not comply with the order, the county is authorized to take action to deconstruct and dispose of the home properly. The responsible party or parties would then be joint and severally liable to the county for costs incurred for its abatement activities, less the amount of any reimbursement grants received by the county.
- Directs the Department of Environment and Natural Resources to use funds from the Solid Waste Trust Fund to provide grants to counties to reimburse their expenses incurred to deconstruct and dispose of abandoned manufactured homes and to provide technical assistance and reimbursement for staffing and training costs. Reimbursement would generally be limited to \$1,000 per unit.

The bill also:

- Prohibits disposal of an intact abandoned manufactured home in a landfill.
- Directs up to \$1,000,000 from the Solid Waste Management Trust Fund to be used in order to provide grants to counties for the cleanup of abandoned manufactured homes (see information on grants above).
- Directs any county receiving a reimbursing grant to report to the Department of Environment and Natural

House Bill 1134

Page 2

Resources on the number of units removed, deconstructed, and disposed of during a fiscal year.

- Provides for planning grants from the Solid Waste Management Trust Fund to counties of up to \$2,500 to prepare a plan for the removal and deconstruction of manufactured homes.

EFFECTIVE DATE: This act becomes effective March 1, 2009 and expires October 1, 2023.

*This summary was substantially contributed to by Jennifer McGinnis and Heather Fennell, Research Division.

H1134e4-SMRG

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1134
Committee Substitute Favorable 6/18/08
Committee Substitute #2 Favorable 6/30/08
Fourth Edition Engrossed 7/3/08
PROPOSED SENATE COMMITTEE SUBSTITUTE H1134-PCS10495-RI-48

Short Title: Cleanup of Abandoned Manufactured Homes.

(Public)

Sponsors:

Referred to:

March 28, 2007

A BILL TO BE ENTITLED

AN ACT TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT BY
ENCOURAGING COUNTIES TO DEVELOP PLANS THAT PROVIDE FOR
THE DECONSTRUCTION OF ABANDONED MANUFACTURED HOMES
AND THE REMOVAL OF REUSABLE OR RECYCLABLE COMPONENTS, BY
PROVIDING FOR THE ABATEMENT OF ABANDONED MANUFACTURED
HOMES THAT ARE DETERMINED TO BE A NUISANCE, AND TO
DESIGNATE THAT A PORTION OF THE SOLID WASTE MANAGEMENT
TRUST FUND BE USED TO FUND THE DECONSTRUCTION AND
REMOVAL OF ABANDONED MANUFACTURED HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 130A of the General Statutes is amended
by adding a new Part to read:

"Part 2F. Management of Abandoned Manufactured Homes.

"§ 130A-309.99A. Findings; purpose.

(a) The General Assembly finds that:

- (1) The number of manufactured homes in North Carolina has risen dramatically as land has become scarce and the housing market has become more expensive.
- (2) Manufactured homes may be difficult and expensive to repair when they begin to deteriorate. Often consumers simply buy another manufactured home unit rather than refurbish a manufactured home that needs repair.
- (3) According to data obtained through the 2000 United States Census, there are more than 80,000 vacant manufactured homes in North

Carolina, of which 40,000 are estimated to be permanently untended or in need of extensive repair.

(4) Abandoned manufactured homes create public health and environmental problems and are a visual blight on the landscape of North Carolina. Further, an abandoned manufactured home poses a fire hazard, a safety hazard to unsupervised children, and is a potential source of toxic or hazardous materials that may escape into the environment. As a result, abandoned manufactured homes constitute a nuisance.

(5) Most landfills will not accept intact manufactured homes due to their bulky nature. In those instances where landfills do accept intact manufactured homes for disposal, the cost of disposal can be prohibitive for many manufactured homeowners. Landfill disposal costs include tipping fees, the costs of transporting the obsolete structures to the landfill, and the costs of removing any hazardous materials, such as asbestos and other harmful chemicals.

(6) Many components of manufactured homes can be reused or recycled, including windows, screens, doors, copper tubing, copper wiring, aluminum, tin, steel, lumber, steel frames, pipes, countertops, cabinets, and other appliances and fixtures. It is estimated that twenty-six percent (26%) to thirty-eight percent (38%) of the components of a manufactured home can be reused or recycled without extensive manual labor.

(7) It is desirable to allow units of local government to manage the disposal of abandoned manufactured homes for themselves and to encourage regional approaches to the deconstruction of abandoned manufactured homes, the removal of components from abandoned manufactured homes that are reusable or recyclable, and the proper disposal of the remainder, including mercury switches from thermostats.

(8) It is in the State's best interest to encourage the reduction of the volume of intact manufactured homes being disposed of at public sanitary landfills, to encourage the deconstruction of abandoned manufactured homes, the removal of components from abandoned manufactured homes that are reusable or recyclable, and to encourage the proper disposal of the remainder, including mercury switches from thermostats.

(b) The purpose of this Part is to provide units of local government with the authority, funding, and guidance needed to provide for the efficient and proper identification, deconstruction, recycling, and disposal of abandoned manufactured homes in this State.

"§ 130A-309.99B. Definitions.

The following definitions apply to this Part:

(1) 'Abandoned manufactured home' means a manufactured home or mobile classroom that is both:

a. Vacant or in need of extensive repair.

b. An unreasonable danger to public health, safety, welfare, or the environment.

(2) 'Intact' when used in connection with 'abandoned manufactured home' means an abandoned manufactured home from which the wheels and axles, white goods, and recyclable materials have not been removed.

(3) 'Manufactured home' is defined in G.S. 105-187.60.

(4) 'Responsible party' means any person or entity that possesses an ownership interest in an abandoned manufactured home.

"§ 130A-309.99C. Management of abandoned manufactured homes.

(a) Plan. – Each county shall consider whether to implement a program for the management of abandoned manufactured homes. If, after consideration, the county decides not to implement a program, the county must state in the comprehensive solid waste management plan that it is required to develop under G.S. 130A-309.09A(b) that the county considered whether to implement a program for the management of abandoned manufactured homes and decided not to do so. A county may, at any time, reconsider its decision not to implement a program for the management of abandoned manufactured homes. If the county decides to implement a program, the county shall develop a written plan for the management of abandoned manufactured homes and include the plan as a component of the comprehensive solid waste management plan it is required to develop under G.S. 130A-309.09A(b). At a minimum, the plan shall include:

(1) A method by which the county proposes to identify abandoned manufactured homes in the county, including, without limitation, a process by which manufactured homeowners or other responsible parties may request designation of their home as an abandoned manufactured home.

(2) A plan for the deconstruction of these abandoned manufactured homes.

(3) A plan for the removal of the deconstructed components, including mercury switches from thermostats, for reuse or recycling, as appropriate.

(4) A plan for the proper disposal of abandoned manufactured homes that are not deconstructed under subdivision (2) of this subsection.

(b) Authority to Contract. – A county may contract with another unit of local government or a private entity in accordance with Article 15 of Chapter 153A of the General Statutes to provide for the management of abandoned manufactured homes within the county and the implementation of its plan under subsection (a) of this section.

(c) Fee Authority. – A unit of local government or a party that contracted with the county under subsection (b) of this section may charge a disposal fee for the disposal of any abandoned manufactured home at a landfill pursuant to this Part.

1 (d) An intact abandoned manufactured home shall not be disposed of in a
2 landfill.

3 **"§ 130A-309.99D. Process for the disposal of abandoned manufactured homes.**

4 (a) If a county adopts and implements a plan for the management of abandoned
5 manufactured homes pursuant to this Part, the county shall notify the responsible party
6 for each identified abandoned manufactured home in the county that the abandoned
7 manufactured home must be properly disposed of by that person within 90 days. The
8 notice shall be in writing and shall be served on the person as provided by Rule 4(j) of
9 the Rules of Civil Procedure, G.S. 1A-1. The notice shall disclose the basis for the
10 action and advise that a hearing will be held before a designated public officer at a place
11 within the county in which the manufactured home is located not less than 10 days nor
12 more than 30 days after the serving of the notice; that the responsible party shall be
13 given the right to file an answer to the order and to appear in person, or otherwise, and
14 give testimony at the place and time fixed in the notice; and that the rules of evidence
15 prevailing in courts of law or equity shall not be controlling in hearings before the
16 public officer.

17 (b) If, after notice and hearing, the public officer determines that the
18 manufactured home under consideration is abandoned, the officer shall state in writing
19 the officer's findings of fact in support of that determination, and the county shall order
20 the person to dispose of the abandoned manufactured home within 90 days of the
21 expiration of this period. If the responsible party fails to comply with this order, the
22 county shall take any action it deems reasonably necessary to dispose of the abandoned
23 manufactured home, including entering the property where the abandoned manufactured
24 home is located and arranging to have the abandoned manufactured home deconstructed
25 and disposed of in a manner consistent with the plan developed under
26 G.S. 130A-309.99C(a). If the responsible party is not the owner of the property on
27 which the abandoned manufactured home is located, the county may order the property
28 owner to permit entry onto the owner's property by an appropriate party to permit the
29 removal and proper disposal of the abandoned manufactured home.

30 (c) When a county removes, deconstructs, and disposes of an abandoned
31 manufactured home pursuant to subsection (a) of this section, whether directly or
32 through a party that contracted with the county, the responsible party or the owner of the
33 property on whose land an abandoned manufactured home is located shall be joint and
34 severally liable for the actual costs incurred by the county, directly or indirectly, for its
35 abatement activities and its administrative and legal expenses incurred, less the amount
36 of grants for reimbursement received by the county under G.S. 130A-309.94(c) for the
37 disposal activities for that manufactured home. The county may initiate a civil action to
38 recover these unpaid costs from the responsible party or the owner of the property on
39 whose land an abandoned manufactured home is located. Nonpayment of any portion of
40 the actual costs incurred by the county shall result in the imposition of a lien on any real
41 property in the county owned by the responsible party or the owner of the property on
42 whose land the abandoned manufactured home is located.

43 (d) This section does not apply to any of the following:

44 (1) A retail business premises where manufactured homes are sold.

(2) A solid waste disposal facility where no more than 10 manufactured homes are stored at one time if all of the manufactured homes received for storage are deconstructed or removed from the facility within one year after receipt.

(e) This section does not change the existing authority of a county or a municipality to enforce any existing laws or of any person to abate a nuisance.

"§ 130A-309.99E. Grants to local governments.

(a) The Department shall use funds from the Solid Waste Trust Fund established by G.S. 130A-309.12 to:

(1) Provide grants to counties to reimburse their expenses for activities under this Part.

(2) Provide technical assistance and support to counties to achieve the purposes of this Part.

(3) Implement this Part, including costs associated with staffing, training, submitting reports, and fulfilling program goals.

(b) Each county that requests a reimbursement grant from the Department shall also submit to the Department a proposed budget specifying in detail the expenses it expects to incur in a specified time period in connection with the activities under this Part. The Department shall review each submitted budget and make modifications, if necessary, in light of the availability of funds, the county's capacity to effectively and efficiently manage the abatement of abandoned manufactured homes, and any other factors that the Department reasonably determines are relevant. When the Department and a county agree on the amount of the county's budget under this subsection, the Department and the county shall execute an agreement that reflects this amount and that specifies the time period covered by the agreement, and the Department shall reserve funds for the county in the amount necessary to reimburse allowable costs. The amount of a reimbursement grant shall be calculated in accordance with subsections (c) and (d) of this section. A county shall not receive a reimbursement grant unless it has filed all the annual reports it is required to submit under G.S. 130A-309.99G.

(c) Reimbursement grants shall be made in accordance with the terms of the grant agreement developed pursuant to subsection (b) of this section, but in any event, all reimbursements shall be calculated on a per-unit basis and based on the actual cost of such activities, not to exceed one thousand dollars (\$1,000) for each unit. For a county designated as a development tier one or two area pursuant to G.S. 143B-437.08 where the costs associated with the disposition of an abandoned manufactured home in a manner consistent with this Part exceed one thousand dollars (\$1,000) per unit, a county may request a supplemental grant in an amount equal to fifty percent (50%) of the amount in excess of one thousand dollars (\$1,000). The Department shall consider the efficiency and effectiveness of the county program in making the supplemental grant, and the county participation must be a cash match.

(d) A county shall use reimbursement grant funds only for operating expenses that are directly related to the management of abandoned manufactured homes. If an operating expense is partially related to the management of abandoned manufactured homes, a county may use the reimbursement grant funds to finance the percentage of the

1 cost that equals the percentage of the expense that is directly related to the management
2 of abandoned manufactured homes.

3 **"§ 130A-309.99F. Authority to adopt ordinances.**

4 A county, or a unit of local government that is delegated authority to do so by the
5 county, may adopt ordinances it deems necessary in order to implement this Part.

6 **"§ 130A-309.99G. Reporting on the management of abandoned manufactured**
7 **homes.**

8 (a) On or before 1 August of each year, any county that receives a reimbursement
9 grant under G.S. 130A-309.99E shall submit a report to the Department that includes all
10 of the following information:

- 11 (1) The number of units and approximate tonnage of abandoned
12 manufactured homes removed, deconstructed, recycled, and disposed
13 of during the previous fiscal year.
- 14 (2) A detailed statement of the county's abandoned manufactured homes
15 account receipts and disbursements during the previous fiscal year that
16 sets out the source of all receipts and the purpose of all disbursements.
- 17 (3) The obligated and unobligated balances in the county's abandoned
18 manufactured homes account at the end of the fiscal year.
- 19 (4) An assessment of the county's progress in removing, deconstructing,
20 recycling, and disposing of abandoned manufactured homes consistent
21 with this Part.

22 (b) The Department shall include in its annual report to the Environmental
23 Review Commission under G.S. 130A-309.06(c) a description of the management of
24 abandoned manufactured homes in the State for the fiscal year ending the preceding 30
25 June. The description of the management of abandoned manufactured homes shall
26 include all of the following information:

- 27 (1) The cost to each county of managing its abandoned manufactured
28 home program during the reporting period.
- 29 (2) The beginning and ending balances of the Solid Waste Management
30 Trust Fund for the reporting period and a list of grants made from the
31 Fund for the period, itemized by county.
- 32 (3) A summary of the information contained in the reports submitted by
33 counties pursuant to subsection (a) of this section.
- 34 (4) Any other information the Department considers helpful in
35 understanding the problem of managing abandoned manufactured
36 homes in the State.

37 **"§ 130A-309.99H. Effect on local ordinances.**

38 This Part shall not be construed to limit the authority of counties under Article 18 of
39 Chapter 153A of the General Statutes or the authority of cities under Article 19 of
40 Chapter 160A of the General Statutes."

41 **SECTION 2.** G.S. 130A-309.06(c) is amended by adding a new subdivision
42 to read:

- 43 "(14) A description of the activities related to the management of abandoned
44 manufactured homes in the State in accordance with

1 G.S. 130A-309.99G, the beginning and ending balances in the Solid
2 Waste Management Trust Fund for the reporting period and the
3 amount of funds used, itemized by county, for grants made under Part
4 2E of Article 9 of Chapter 130A of the General Statutes."

5 **SECTION 3.** G.S. 130A-309.09A(b) is amended by adding a new
6 subdivision to read:

7 "(9) Include as a component a written plan for the management of
8 abandoned manufactured homes as required under
9 G.S. 130A-309.99C(a)."

10 **SECTION 4.** The Department of Environment and Natural Resources shall
11 annually use up to one million dollars (\$1,000,000) from the Solid Waste Management
12 Trust Fund established by G.S. 130A-309.12 in order to fund the cleanup of abandoned
13 mobile homes as provided in G.S. 130A-309.99E.

14 **SECTION 5.** A county designated as a development tier one or two area
15 pursuant to G.S. 143B-437.08 may, upon resolution by the board of commissioners of
16 their intent to (i) develop a plan for the management of abandoned manufactured homes
17 and (ii) implement the plan once developed, request a planning grant of up to two
18 thousand five hundred dollars (\$2,500) from the Solid Waste Management Trust Fund.
19 These funds shall be used by the county to prepare a plan as provided in
20 G.S. 130A-309.99C, as enacted by Section 1 of this act, and to identify abandoned
21 manufactured homes.

22 **SECTION 6.** This act becomes effective 1 March 2009 and expires 1
23 October 2023.

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Wed
 July 9, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Paul Meyer	NCACC
Elizabeth Biser	DENR
Scott Mouw	DENR
Patrick Buffin	MMR &
Pete Jarvis	Gov Office
Calvin Leggett	NCDOT
Andrew Cagle	Bone & Bone
Michael Thompson	Dominion
George Luchter	PBV
Cameron Hanley	Electricity of NC, Inc.

Date

ate Wed
July 9, 2008

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

[illegible]

VISITOR REGISTRATION SHEET

Senate Standing Committee on State & Local Government July 8, 2008

Name of Committee

Date

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CLERK

NAME	FIRM OR AGENCY AND ADDRESS
LOUIS PATE	NC REPRESENTATIVE
<i>[Signature]</i>	RAND - Taz Apple
<i>[Signature]</i>	N.C. Reg. Council
Rep. Bill Jinx	NC House
Michelle Frazier	MFS
Li-Ann Chapman	DZC
Zeb Alley	Nelson Mullins
Jessica Hayes	NC HBA
Lisa Martin	NC HBA
GORDON MYERS	NCWRC
Debra De Camilli	LOG

VISITOR REGISTRATION SHEET

Name of Committee
SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

Wed
 July 9, 2008

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NAME

FIRM OR AGENCY AND ADDRESS

Katherine Gipe	NCAST
Scott Denton	Durham Public Schools
Craig Warner	NCOPI
BERRY JENKINS	CAROLINAS AGC
DONNIE REDMOND	DENR- AIR QUALITY
Leslie Arnold	SOG-Daily Bulletin
Wile Whicamson	NCDOT/DMV
Andrew Meehan	NC Assn Elec. Co-ops
Doug Dunnagan	NCDMV
Cady Thomas	NCAR

VISITOR REGISTRATION SHEET

Name of Committee

SENATE COMMERCE, SMALL BUSINESS
AND ENTREPRENEURSHIP

Date

ate Wed
July 9, 2008

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press

Johanna Reese

DOT

Patrick Simmons

N C DOT

Elizabeth Ouzts

Environment NC

John McNeil

Gov online

Andy Ronant

NCLM

Principal Clerk _____
Reading Clerk _____

SENATE
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

The Senate Committee on **Commerce, Small Business and Entrepreneurship** will meet at the following time:

DAY	DATE	TIME	ROOM
Thursday	July 10, 2008	11:00 AM	1027 LB

The following will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 1339	Gasoline and Fuel Alcohol Blending.	Senator Jenkins

Senator R. C. Soles, Jr., Chair

Senate Commerce, Small Business and Entrepreneurship Committee
Thursday, July 10, 2008, 11:00 AM
LB 1027

AGENDA

Welcome and Opening Remarks

Introduction of Pages

Bills

SB 1339 Gasoline and Fuel Alcohol Blending.

Senator Jenkins

Presentations

Other Business

Adjournment

SENATE COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE

Thursday, July 10, 2008

Room 1027, Legislative Building

MINUTES

The Senate Commerce, Small Business and Entrepreneurship Committee met at 11:00 a.m. on Thursday July 10, 2008, in Room 1027 of the Legislative Building. Twenty-two members of the Committee were present. Senator R. C. Soles, Jr., Chairman, presided.

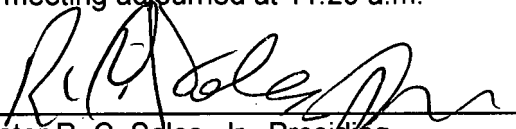
Senator Soles recognized the following pages assisting with today's meeting: Toy Beening, Smithfield, sponsored by Senator Doug Berger; Charlie Laughlin, Greensboro, sponsored by Senator Hagan; Caitlin Truelove, Raleigh, sponsored by Senator Hunt; Sara Harling, Scotland County, sponsored by Senator Purcell; and Kareem Shaw, Riegelwood, Randi Simmons, Clarendon, and Mary Catherine Worley, sponsored by Senator Soles.


Senator Soles stated that the first order of business would be to consider the question of concurrence in the House Committee Substitute bill to S. B. 1339, Gasoline and Fuel Alcohol Blending. Senator Jenkins was recognized to explain the house committee substitute bill. Senator Soles then recognized Gary Harris, Executive Director of the Petroleum and Convenience Store Marketers, who spoke in support of the measure. Mr. Bill Weatherspoon, representing the North Carolina Petroleum Council, was present and spoke to the committee in opposition to the bill and expressed his concerns that this bill could cause possible duplications and inefficiencies in the market. Mr. Weatherspoon submitted supporting materials to be included in the record (attached).

Senator Soles announced that the fiscal note requested by Senator Clodfelter on July 9, 2008, had been received. Members were given copies of the fiscal note which showed no fiscal impact. (attached). He then recognized Dan Mohnter, representing Marathon Petroleum Company, LLC, who also spoke in opposition to the bill.

After discussion by members and staff, Senator Apodaca moved for a favorable report as to concurrence in the House Committee Substitute bill. Motion carried.

The meeting adjourned at 11:29 a.m.


Senator R. C. Soles, Jr., Presiding


Ramona Fitzgerald, Committee Assistant

**NORTH CAROLINA GENERAL ASSEMBLY
SENATE**

**COMMERCE, SMALL BUSINESS AND ENTREPRENEURSHIP COMMITTEE REPORT
Senator R. C. Soles, Jr., Chair**

Thursday, July 10, 2008

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

FAVORABLE AS TO CONCURRENCE

S.B.(HCS #1) 1339	Gasoline and Fuel Alcohol Blending.	
	Sequential Referral:	None
	Recommended Referral:	None

TOTAL REPORTED: 1

Committee Clerk Comments:

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

4

SENATE BILL 1339
Second Edition Engrossed 5/14/07
House Committee Substitute Favorable 7/2/08
Fourth Edition Engrossed 7/7/08

Short Title: Gasoline and Fuel Alcohol Blending.

(Public)

Sponsors:

Referred to:

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE SUPPLIERS THAT IMPORT GASOLINE FOR SALE IN
3 THIS STATE TO OFFER GASOLINE FOR SALE TO A DISTRIBUTOR OR
4 RETAILER THAT IS NOT PREBLENDED WITH FUEL ALCOHOL AND THAT
5 IS SUITABLE FOR SUBSEQUENT BLENDING WITH FUEL ALCOHOL AND
6 TO PROVIDE THAT CONTRACT PROVISIONS THAT RESTRICT OR
7 PREVENT DISTRIBUTORS OR RETAILERS FROM BLENDING GASOLINE
8 AND FUEL ALCOHOL ARE VOID.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 3 of Chapter 75 of the General Statutes is amended by
11 adding a new section to read:

12 "§ G.S. 75-90. Availability of gasoline suitable for blending with fuel alcohol;
13 blender of record.

14 (a) The following definitions apply in this section:

15 (1) Blender. – Defined in G.S. 105-449.60.

16 (2) Distributor. – Defined in G.S. 105-449.60.

17 (3) Fuel Alcohol. – Defined in G.S. 105-449.60.

18 (4) Gasoline. – Defined in G.S. 105-449.60(15)a.

19 (5) Retailer. – Defined in G.S. 105-449.60.

20 (6) Supplier. – Defined in G.S. 105-449.60.

21 (b) A supplier that imports gasoline into the State shall offer gasoline for sale to a
22 distributor or retailer that is not preblended with fuel alcohol and that is suitable for
23 subsequent blending with fuel alcohol.

24 (c) The General Assembly finds that use of blended fuels reduces dependence on
25 imported oil and is therefore in the public interest. The General Assembly further finds
26 that gasoline may be blended with fuel alcohol below the terminal rack by distributors
27 and retailers as well as above the terminal rack by suppliers and that there is no reason

1 to restrict or prevent blending by suppliers, distributors, or retailers. Therefore, any
2 provision of any contract that would restrict or prevent a distributor or retailer from
3 blending gasoline with fuel alcohol or from qualifying for any federal or State tax credit
4 due to blenders is contrary to public policy and is void. This subsection does not impair
5 the obligation of existing contracts, but does apply if such contract is modified,
6 amended, or renewed."

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



SENATE BILL 1339: Gasoline and Fuel Alcohol Blending

BILL ANALYSIS

Committee:	Senate Commerce, Small Business and Entrepreneurship	Date:	July 10, 2008
Introduced by:	Sen. Jenkins	Summary by:	Wendy Graf Ray
Version:	Fourth Edition		Committee Counsel

SUMMARY: *Senate Bill 1339 would require suppliers that import gasoline for sale in North Carolina to offer gasoline for sale to a distributor or retailer that is not pre-blended with fuel alcohol and that is suitable for subsequent blending with fuel alcohol. Senate Bill 1339 would also provide that contract provisions that restrict or prevent distributors or retailers from blending gasoline and fuel alcohol are void.*

BILL ANALYSIS: Senate Bill 1339 would add a new section to Article 3 (Motor Fuel Marketing Act) of Chapter 75 (Monopolies, Trusts, Etc) of the General Statutes that would require a supplier that imports gasoline into the State to offer gasoline for sale to a distributor or retailer that is not pre-blended with fuel alcohol and that is suitable for subsequent blending with fuel alcohol. It would also make void any provision in a contract that restricts or prevents a distributor or retailer from blending gasoline with fuel alcohol or from qualifying for any tax credit available to blenders. The bill would not impair existing contracts, but would apply to modified, amended, or renewed contracts.

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

BACKGROUND*: Senate Bill 1339 would allow North Carolina wholesalers or retailers of gasoline to have access to gasoline at the pipeline outlets (terminal rack) in North Carolina for blending purposes. This provision would allow for in-State firms to purchase fuel alcohol in the market and blend the fuel alcohol with gasoline after it is picked up from the pipeline (below rack). Senate Bill 1339 would also permit the major oil suppliers to blend fuel alcohol at the terminal rack for sale. This is necessary because blending of fuel alcohol with gasoline after it is picked up from the terminal rack allows North Carolina wholesalers and retailers to qualify for a federal tax credit of approximately five cents per gallon of fuel alcohol-blended fuels.

*Jennifer Mundt, legislative analyst to the House Environment and Natural Resources Committee, substantially contributed to this summary. * Background information provided by the North Carolina Petroleum Manufacturers Association.*

S1339e4-SMSU

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2007

Legislative Fiscal Note

BILL NUMBER: Senate Bill 1339 (Fourth Edition)

SHORT TITLE: Gasoline and Fuel Alcohol Blending.

SPONSOR(S): Senator Jenkins

FISCAL IMPACT

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

FY 2008-09 FY 2009-10 FY 2010-11 FY 2011-12 FY 2012-13

REVENUES

EXPENDITURES

See Technical Considerations

POSITIONS (cumulative):

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:**

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY:

March 21, 2007

S 1339. DELAY ECOSYSTEM ENHANCEMENT PROGRAM FEES. Filed 3/21/07. TO DELAY THE EFFECTIVE DATE OF A PROPOSED RULE CONSIDERED FOR ADOPTION BY THE ENVIRONMENTAL MANAGEMENT COMMISSION TO INCREASE CERTAIN FEES UNDER THE ECOSYSTEM ENHANCEMENT PROGRAM.

Delays the effective date of the proposed rules noticed in 21 NC Reg 1086 to 15A NCAC 2R .0402 (for the schedule of fees for payment into the Wetland Restoration Fund necessary to achieve compliance with compensatory mitigation requirements) until the submission of the final report on: (1) the study of the merger of the Ecological Enhancement Program and the Clean Water Management Trust Fund; and (2) the study of the nutrient offset payment program.

May 14, 2007

S 1339. DELAY ECOSYSTEM ENHANCEMENT PROGRAM FEES. Filed 3/21/07. Senate amendment makes the following changes to 1st edition. Makes clarifying and technical changes.

July 2, 2008

S 1339. GASOLINE AND FUEL ALCOHOL BLENDING (NEW). Filed 3/21/07. House committee substitute makes the following changes to 2nd edition. Completely rewrites bill so it now is entitled AN ACT TO REQUIRE SUPPLIERS THAT IMPORT GASOLINE FOR SALE IN THE STATE TO OFFER GASOLINE FOR SALE TO A DISTRIBUTOR OR RETAILER THAT IS NOT PRE-BLENDED WITH FUEL ALCOHOL AND THAT IS SUITABLE FOR SUBSEQUENT BLENDING WITH FUEL ALCOHOL AND TO PROVIDE THAT CONTRACT PROVISIONS THAT RESTRICT OR PREVENT DISTRIBUTORS OR RETAILERS FROM BLENDING GASOLINE AND FUEL ALCOHOL ARE VOID. Enacts new GS 75-90 for purposes indicated in new title.

July 7, 2008

S 1339. GASOLINE AND FUEL ALCOHOL BLENDING. Filed 3/21/07. House amendments make the following changes to 3rd edition. Amendment #2 amends proposed new GS 75-90(c) to state that any provision of any contract that would restrict or prevent a distributor or retailer from blending gasoline with fuel alcohol or from qualifying for any tax credit due to blenders is contrary to public policy and is void (previously, this provision was stated as a General Assembly finding). Amendment #1 also provides that the proposed subsection does not impair existing contractual obligations but its provisions apply if an existing contract is modified, amended, or renewed.

Source: Bill Digest S.B. 1339 (03/21/0200).

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue and the Department of Agriculture have each indicated that they expect no fiscal impact on their operations from passage of this bill.

SOURCES OF DATA: Department of Revenue, Department of Agriculture, South Carolina Department of Revenue

TECHNICAL CONSIDERATIONS: It has been noted in the petroleum industry that such bills may be challenged on constitutional grounds. In South Carolina a similar bill was passed, vetoed, passed over the veto, and challenged in court. An injunction has been granted against enforcement until the case can be heard on the merits. South Carolina Department of Revenue officials indicate that defending against the suit can cost hundreds of thousands of dollars with the possibility of similar or greater costs if the State does not prevail and must pay legal fees.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Bob Weiss

APPROVED BY:

Lynn Muchmore, Director
Fiscal Research Division

DATE: July 10, 2008



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7/10/08*

Burley B. Mitchell, Jr.
Direct Dial: (919) 755-8166
Direct Fax: (919) 755-6769
E-mail: b Mitchell@wcsr.com

June 24, 2008

Mr. William H. Weatherspoon
Executive Director
North Carolina Petroleum Council
410 North Boylan Avenue, Suite 146
Raleigh, NC 27603s

Re: *Proposed N.C. Gen. Stat. § 119-26.4*

Dear Mr. Weatherspoon:

You requested an opinion regarding proposed N.C. Gen. Stat. § 119-26.4, including potential constitutional deficiencies. The proposed statute would require terminals within North Carolina to offer petroleum product that is not pre-blended with ethanol but nevertheless is suitable for subsequent blending. A violation of the statute would constitute an unfair method of competition under North Carolina's Unfair or Deceptive Trade Practices Act.

In our opinion the proposed statute raises potentially serious constitutional concerns, some or all of which might be expected to be raised in a legal challenge if the proposed statute is enacted. First, the proposed statute would appear to violate the U.S. Constitution's Contract Clause through improperly modifying existing contracts between an oil company and distributors or retailers by voiding any provision allowing the oil company to terminate with respect to provision of gasoline not blended with ethanol. Second, the proposed statute may be preempted by Federal law because it would be an obstacle to fulfilling the accomplishment of Federal objectives with respect to the Federal Renewable Fuel Standards Program. Additional considerations are noted below after an analysis of these primary concerns. Because the analysis turns in large measure upon the operation of the Federal "renewable fuel program," the following section sets out our understanding of relevant features of that program.

**BLENDED GASOLINE: FEDERAL REGULATION, CONTRACTS,
AND PROPOSED N.C. GEN. STAT. § 119-26.4**

Congress created a complex but comprehensive statutory framework to address the nation's dependence on foreign oil as well as environmental concerns relating to energy production and distribution. An important part of that framework is the "Renewable Fuel Standards Program." That program, set out in 42 U.S.C. § 7545(o), directs the EPA Administrator to promulgate regulations "to ensure that gasoline sold or introduced into

commerce in the United States . . . contains the applicable volume of renewable fuel” as set out by law. In the “Energy Independence and Security Act of 2007,” Congress raised the relevant targets to 9 billion gallons of renewable fuel for 2008, increasing to 36 billion gallons for 2022.

The renewable fuel obligation for each calendar year applies to refiners and to importers but not to blenders who “simply add[] renewable fuel to gasoline.” 40 C.F.R. § 80.1106(a). Each refiner and importer must demonstrate that it has satisfied its particular “Renewable Volume Obligation” (“RVO”) for each compliance period. An obligated party’s RVO is calculated by applying an EPA-set “Renewable Fuel Standard.” In February 2008, EPA raised the 2008 Renewable Fuel Standard for renewable fuels (including ethanol) from 4.66% to 7.76% of the nation’s gasoline supply, an increase of two-thirds over the 2008 level set only three months earlier. The RVO requirement, however, does not apply to distributors (e.g., jobbers) or retailers (e.g., convenience stores) who blend ethanol into gasoline by simply adding the renewable fuel. Under the proposed statute, the nonobligated distributor or retailer who subsequently blends will be considered the “blender of record.”

In the past, the oil companies entered into contracts which provided for sale of gasoline that was not pre-blended with ethanol. In light of the mandatory Federal obligations imposed on oil company refiners and importers, however, these contracts typically contain a clause providing the oil company with the right to terminate the supply of nonblended gasoline upon 30 days’ notice. With increasingly exacting Federal requirements, the oil company refiners and importers may be expected to decrease the sale of gasoline not already blended with ethanol.

The distributors and retailers, through proposed N.C. Gen. Stat. § 119-26.4(a), seek to force obligated parties to continue to make available gasoline that is not pre-blended with ethanol. The proposed statute provides that a “terminal located within the State shall offer for sale a petroleum product that is not pre-blended with ethanol and that is suitable for subsequent blending of the product with ethanol.” The proposed North Carolina legislation does not designate the extent to which such gasoline must be provided, only that such be offered for sale.

The support of distributors and retailers for the proposed statute relates to their economic interest rather than to EPA requirements and Federal goals. This support undoubtedly arises from considerations with respect to the Volumetric Ethanol Excise Tax Credit (“VEETC”), which provides a tax credit to the blending entity. The tax credit has been \$0.51 per gallon of ethanol such that a credit of \$5.10 was available from the blending of 10 gallons of ethanol with 90 gallons of gasoline to create what is known as E-10 (or 10% ethanol) fuel. The 2008 Farm Bill lowered the VEETC to \$0.45 per gallon. Proposed Section 119-26.4(b) specifically addresses this tax credit with respect to who may claim to be the “blender of record.”

THE PROPOSED STATUTE WOULD IMPAIR THE OBLIGATION OF CONTRACTS

The United States Constitution expressly prohibits a State from passing any “Law impairing the Obligation of Contracts.” U.S. Const. Art. 1, § 10, cl. 1 (“Contract Clause”). The

North Carolina Supreme Court noted that the Contract Clause means that "[a]ny law which enlarges, abridges or changes the intention of the parties as indicated by the provisions of a contract necessarily impairs the contract whether the law professes to apply to obligations of the contract or to regulate the remedy for enforcement of the contract." *Adair v. Orrell's Mut. Burial Assoc.*, 284 N.C. 534, 538, 201 S.E.2d 905, 908 (1974).

The U.S. Supreme Court and North Carolina courts employ the three-part test set forth in *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1 (1977), although in the private contract case, Federal courts also employ a refined three-part test set out in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983). The *U.S. Trust* test requires a court to ascertain:

(1) whether a contractual obligation is present; (2) whether the state's actions impaired that contract; and (3) whether the impairment was reasonable and necessary to serve an important public purpose.

Bailey v. State of North Carolina, 348 N.C. 130, 140-41, 500 S.E.2d 54, 60 (1998) (citing *U.S. Trust*). Although *U.S. Trust* and *Bailey* involved a governmental party, the test is also applied with respect to contracts involving only private parties. See, e.g., *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).

Under *Energy Reserves*, the first inquiry is whether the State law has, in fact, operated as a "substantial impairment" on pre-existing contractual relationships. If a substantial impairment exists, the State must have a significant and legitimate public purpose behind the regulation. If a significant and legitimate public purpose has been identified, the court must determine whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. In the private contract context, courts generally defer to the legislature with respect to the reasonableness and necessity of a particular measure. A significant and legitimate purpose, however, must first exist. *Energy Reserves*, 459 U.S. at 411-12.

The Proposed Statute Would Constitute a Substantial Impairment of Existing Contracts.

While the U.S. Supreme Court has not always been clear regarding what constitutes "substantial impairment," it appears to assume that an impairment is substantial at least when the right abridged was a right which induced the parties to contract in the first place or where the impaired right was one on which there had been reasonable reliance. See *Spannaus*, 438 U.S. at 243 n.14 & 246.

The application of the Contract Clause to the proposed statute is illustrated by *Garris v. Hanover Insurance Company*, 630 F.2d 1001 (4th Cir. 1980), in which the Fourth Circuit concluded that a statute which imposed a limitation on termination of a contract between an insurance company and an agent which had a termination clause violated the Contract Clause.

The Fourth Circuit concluded that the termination provision "must be accounted a critical feature of [the insurance company's] total contractual relationship with its agents."

In the instant case, the obligated parties must meet RVOs and, for that reason, the ability to terminate a contract with respect to unblended gasoline is critical in maintaining the flexibility to meet Federal requirements that may well change, as demonstrated by EPA's February 2008 increase of the Renewable Fuel Standard. If there was any doubt with respect to how the parties viewed the termination clause, that doubt is resolved by the proposed statute itself, whose primary purpose is to void and prevent such clauses. Indeed, the distributors and retailers seek to avoid the very limitations to which they earlier agreed.

The Proposed Statute is Neither Reasonable nor Necessary to Serve an Important Public Purpose.

If the legislation constitutes a substantial impairment (as in this case), the State, in justification, must have a significant and legitimate public purpose behind the regulation such as remedying a broad and general social or economic problem. A legitimate public purpose is required to guarantee that the State is exercising its police power rather than providing a benefit to special interests. *Energy Reserves*, 459 U.S. at 412. As noted by the Fourth Circuit Court of Appeals, "[i]n this sensitive realm [a court's] duty is simply and inescapably to give [its] independent, considered judgment as to whether the legislative enactment makes a rational accommodation between the affirmative power exercised by the state and the negative safeguard embodied in the Contract Clause." *Garris*, 630 F.3d at 1009-10 (concluding predominant purpose of challenged provision was to protect the private interest of affected insurance agents rather than any broader social interest).

The proposed statute would not be an exercise of the State's police power but would provide a benefit to special interests. The proposed statute did not appear as part of any energy, environmental or public safety proposals. Indeed, the effect of the legislation means that the same or an increasing amount of blending would occur in North Carolina, with the related potential hazards of the operation. The proposed statute was added to the Budget bill after the bill had undergone several editions. But the purpose of the legislation would be to benefit the special interests who back the legislation rather than serve a broader purpose.

**THE PROPOSED STATUTE RAISES FEDERAL PREEMPTION QUESTIONS,
INCLUDING APPLICATION OF "CONFLICT PREEMPTION"**

The Federal statute and regulations established a renewable fuels program that requires each "obligated party" to meet a specified RVO. The proposed statute would significantly diminish the ability of an obligated party to satisfy its RVO requirement through that obligated party's own refining or importation. Obligated parties might be required to purchase credits on the open market, the cost and availability of which would be uncertain. Even if the North Carolina statute did not render compliance with both Federal law and State law an impossibility, the statute would stand as an obstacle to the accomplishment of the full purposes and objectives of the Federal renewable fuel program, possibly resulting in "obstacle preemption."

Background Regarding Federal Preemption, Including "Obstacle Preemption."

Preemption is a fundamental principal of the U.S. Constitution and follows from the Supremacy Clause which renders Federal law "the supreme Law of the Land" Federal preemption applies not only when Congress expressly preempts State law or "preempts the field," but also when "it is impossible to comply with both state and federal law" or when "*the state law stands as an obstacle to the accomplishment of the full purposes and objectives*" of Federal law, the latter two situations being known as "conflict preemption." *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984) (emphasis added); *Anderson v. Sara Lee Corp.*, 508 F.3d 181, 191-92 (4th Cir. 2007). See *Owens v. Pepsi Cola Bottling Co.*, 330 N.C. 666, 412 S.E.2d 636 (1992) (because the Federal Soft Drink Act authorized soft drink bottlers to impose wholesaling restrictions on their customers to prevent transshipping, North Carolina's unfair practices law was "decidedly an obstacle" to accomplishment of Congress' objectives).

Conflict preemption, including "obstacle preemption," can arise even when the conflict does not stem directly from Federal statutory language. Regulations promulgated pursuant to Federal statutory authority "have no less pre-emptive effect than federal statutes." *Fidelity Federal Savings and Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982). In determining the preemptive effect of Federal law, therefore, courts will look not only to statutes but also to any resulting regulations.

The U.S. Supreme Court made clear that obstacle preemption does not require a court to find that compliance with both Federal law and State law is impossible, holding that "conflicts" that prevent or frustrate the accomplishment of a federal objective are "nullified" by the Supremacy Clause. *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873 (2000). Indeed, the Supreme Court has found obstacle preemption to exist in a variety of contexts in which a state law posed an obstacle to accomplishment of the purposes of Federal law. See, e.g., *Geier*, 529 U.S. at 873; *Boggs v. Boggs*, 520 U.S. 833 (1997); *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987); *Mich. Cannery & Freezers Ass'n v. Agric. Mktg. & Bargaining Bd.*, 467 U.S. 461 (1984).

While tension between Federal and State law alone is generally not enough to support an obstacle preemption, "[w]hat is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000).

Obstacle Preemption Examination of Proposed N.C. Gen. Stat. § 119-26.4.

The proposed statute will likely impede the goal of Federal policy as expressed in the carefully constructed renewable fuel program.¹ The proposed North Carolina legislation, however, would require refineries and importers to make available unblended gasoline with the expectation that distributors and retailers will be the blenders of record. This, in fact, is an

¹ While certain statutory and regulatory provisions contain savings clauses, such do not bar the ordinary working of conflict preemption. *Geier*, 529 U.S. at 869.

express expectation of proposed N.C. Gen. Stat. § 119-26.4(b). As noted above, however, refineries and importers are "obligated parties" which must satisfy their own "Renewable Volume Obligations" ("RVOs") for each compliance period.

As a result, there is a significant possibility that the proposed statute would impair the full purposes and objectives of the carefully crafted Federal renewable fuel program. At a minimum, the proposed statute appears to stand as an obstacle to the efficient working of that program. A requirement that an obligated party make available to nonobligated parties "blendable" gasoline containing no ethanol results in a decrease in the obligated parties' sale of renewable fuels with a consequent impairment of the obligated party's ability to satisfy its RVO.

While it may be possible to buy Renewable Identification Numbers (RINs) on the open market which can count toward satisfying an RVO, it is not clear what the market might be for RINs, particularly when refiners and importers are forced to sell unblended gasoline to third-party jobbers and retailers who are interested in a tax credit but who need not meet an RVO. If other States adopt North Carolina's proposed approach, chaos could result with respect to RINs. Conflict preemption, of course, does not require a showing that it is impossible to comply with Federal law and State law (although such would result in a preemption). Rather, as discussed above, conflict preemption also occurs when State legislation is "an obstacle" to accomplishing Congress' objectives as set forth by statute and as implemented by regulatory agencies.

THE PROPOSED STATUTE IMPLICATES OTHER CONSTITUTIONAL CONCERNS, INCLUDING THE DORMANT COMMERCE CLAUSE

The proposed statute might implicate other constitutional provisions, although the application of those provisions to the proposed statute has not been considered in detail.

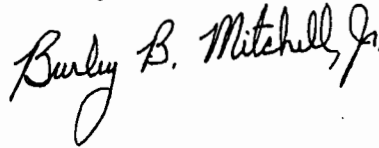
- Dormant Commerce Clause. The dormant Commerce Clause is aimed at preventing a State from imposing economic protectionism, whether that protection is intended for in-State consumers or in-State merchants. *Brown-Forman Distillers Corp. v. New York Liquor Authority*, 476 U.S. 573, 580 (1986) (State "may not insist that producers or consumers in other States surrender whatever competitive advantages they may possess.").
- Equal Protection and Due Process. Legislation in the nature of the proposed statute may be susceptible to challenges of equal protection and substantive due process.

One additional concern is the potential effect of the proposed statute on a refiner's or importer's trademarks. A jobber, for example, might purchase 84 Octane fuel which, with ethanol, can be blended to an appropriate 87 Octane minimum. But once the refiner's or importer's gasoline is in the hands of the jobber, little control is retained over quality, with potential implications for trademark value if the gasoline is not properly blended by the jobber.


SUMMARY

The proposed legislation to add Section 119-26.4 to the North Carolina General Statutes could benefit from further reflection and vetting not only with respect to its practical effect on the economy but also with respect to the constitutional concerns outlined above.

Sincerely,



Burley B. Mitchell, Jr.



W. David Edwards

BBM:adn

NC STATE UNIVERSITY

June 16, 2008

Department of Economics
Campus Box 8110
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919.515.3274 (phone)
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Mr. William H. Weatherspoon
Executive Director
North Carolina Petroleum Council
410 North Boylan Avenue, Suite 146
Raleigh, NC 27603

Dear Mr. Weatherspoon:

You have requested a summary review and an analysis of the provisions in the recently considered--but vetoed--South Carolina measure, S 1143. That measure--pushed by oil jobbers and convenience stores-- mandated that a fuel--other than a fuel with "supplier added ethanol"-- be offered at in-state gasoline terminals that would be suitable for "jobber added ethanol" at an off site location. No other state in the country has enacted such provisions, but the same regional proponents are expected to push for a similar proposal before the North Carolina General Assembly.

You requested that the likely significant outcomes be cited if such a bill were enacted in North Carolina. Further, you invited my views on consumer impacts, environmental risks and the impacts that could be reasonably predicted in the gasoline marketplace on operations, costs and efficiencies.

My summary views of the oil jobber/convenience store pushed bill follow:

The bill has a single purpose: capturing the 5.1 cents per gallon federal tax credit that is available to ethanol blenders. Major oil companies and importers are "obligated parties" to meet increasing annual sales mandates for ethanol under the federal Energy Independence and Security Act of 2007. The South Carolina bill is a recipe for **higher gasoline costs** through inefficiencies and duplication.

It is **ethically flawed** in that it is special interest legislation that was "slipped through" the process--never the subject in South Carolina of public hearings, public input or committee consideration. It was sought by one group for their own exclusive monetary benefit--with no public benefit and without consumer input--it is the definition of **anti-consumer**.

Decentralized and geographically dispersed gasoline/ethanol blending will surely result in **increased environmental risk** in North Carolina as ethanol is stored and mixed at multiple locations in many of our 100 counties. Leaks, truck accidents and spills can be expected to increase as the antiquated practice of "**splash blending**" becomes widespread.

The Governor of South Carolina vetoed the bill for many valid reasons, but in large part because the true purpose was hidden. The actual purpose is to subvert existing contracts between oil companies and their wholesalers. This "impairment of contract" is **prohibited in the US Constitution** and state law. The vetoed South Carolina measure accomplished a "legislated confiscation" of required blending stock which the major oil companies--the "obligated parties"-- own and depend upon to meet the federal mandate to increase sales of ethanol.

That **legislated confiscation of blending stock**--through what is a forced sale--cleverly opens the only door through which wholesalers may attain "blender status" and thereby add a new 5.1 cents per gallon (a federal tax credit) to their business model. The bill will result in **increased regulatory work** for state fuel inspectors as they look for illegal "over-blending of ethanol"--a consequence of splash blending in which an illegal blend greater than 10% ethanol is observed.

Ironically, those who seek the bill would probably be much better served--as would their communities--if they embraced the major suppliers' "blend at the terminal" approach. That plan adopts state of the art, in-line, computer controlled blending and mixing of ethanol at the terminal. Blending and mixing at the terminal confines most blending to the state's three terminal complexes in Charlotte, Greensboro and Selma. This approach is much preferred to the "accident-waiting-to-happen" syndrome which is easy to imagine: trucks, drivers, ethanol mixing, storage tanks, and gasoline in 100 different locations. How long will it take before that picture ends in trouble for one of those 100 communities? By embracing the terminal approach, the jobbers would avoid all the issues mentioned above regarding duplication of costs, fuel quality, and environmental risks being spread to more locations. No doubt fuel inspectors and many communities would prefer that ethanol be added only at the terminals. That is, after all, the outcome envisioned by the federal mandate that applies to the "obligated party" major suppliers--not to the oil jobbers and convenience stores.

Jobber-added ethanol would create scheduling, logistical and quality problems for refiner/suppliers--the parties obligated by the federal mandate to meet ethanol requirements. Consider regular 87 octane gasoline. Regular grade gasoline is higher octane than the raw blending stock gasoline to which refiner/suppliers will add ethanol to meet the federal mandate. The addition of standardized ethanol in the proper proportion increases the octane of the raw blending stock to the 87 octane level of regular grade. Terminal operators will need to anticipate jobber/convenience store demands for raw sub-octane blending stock gasoline versus blended 10% ethanol gasoline. Scheduling imbalances and logistical complications are a likely consequence.

In addition, if sub-octane gasoline is introduced into the distribution system beyond the terminal, it is likely that variations in product quality--i.e. octane rating and ethanol/gasoline mix ratio--will reach the ultimate consumers, drivers of automobiles and trucks. Tank-truck drivers will have to do the physical calculations to compute the proper amount of ethanol to add to each tank compartment of their truck. This creates many, many opportunities for multiple errors in the ethanol/gasoline mix ratio for the fuel that goes into drivers' gas tanks. In some cases, not enough ethanol will be added and sub-octane gasoline

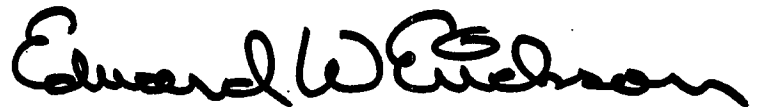
will cause poor vehicle performance. In other cases, too much ethanol will be added and an illegal fuel--not meeting North Carolina regulatory specifications--will be the result.

The gasoline distribution system is a logistical miracle. Every day hundreds of millions of gallons of gasoline get to the right places, in the right amounts, at the right times, in the right product mix. The federal ethanol mandate is a new complication. Refiner/suppliers can operate centralized terminals in an efficient, cost effective and environmentally sound way to meet the federal mandate without disrupting the logistical system. Jobber added ethanol is a "fix" to a system that is not broken.

Finally, it is apparent to industry observers that a fuel with ethanol added is certainly about to debut in this market. The major oil suppliers--the obligated parties-- must meet that goal due to the federal mandate. Their decision to accomplish blending at the terminal is efficient and cost-effective. The blend at the terminal approach relies upon the safest blending technology and is environmentally smart. For the gasoline middlemen to attempt to "game" federal policy, increase environmental risks, act to impair contracts to which they are parties, and to push legislative action "in the dark" raises disturbing questions. I now have renewed respect for the political courage of the first governor to veto this measure.

Years of troubling disclosures on legislative ethics--and the promising responses to them in North Carolina--should mean that any proposal like the South Carolina measure will get a needed dose of open study and plenty of "legislative sunshine".

Sincerely,

A handwritten signature in black ink, reading "Edward W. Erickson". The signature is fluid and cursive, with the first name "Edward" being the most prominent.

Edward W. Erickson
Professor Emeritus



State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

POST OFFICE BOX 12267
COLUMBIA 29211

June 11, 2008

The Honorable André Bauer
President of the Senate
State House, First Floor, East Wing
Columbia, South Carolina 29201

Dear Mr. President and Members of the Senate:

I am hereby vetoing S. 1143, R-356. S. 1143 does the following three things: (1) creates a month-long sales tax holiday for the purchase of energy-efficient products; (2) creates a two-day sales tax holiday for the purchase of firearms; and (3) requires all gasoline suppliers to provide raw gasoline to retailers and distributors so that they can "splash blend" ethanol.

First, while we support the intent underlying sales tax holidays, we are vetoing this bill because we don't believe that sales tax holidays are an effective method of promoting energy efficiency or the Second Amendment. While we certainly support consumers purchasing energy-efficient products and firearms, we believe the best way to do that is to create a low-tax, consumer-friendly environment on a permanent basis. Several studies have shown that providing a temporary sales tax holiday does not have a significant impact on consumer demand for products and, by extension, the economy because it only affects the timing of a purchase. In short, we ought to be permanently lowering taxes and then leaving it to the individual to decide how and when to spend their money.

Second, we are vetoing this bill because the "splash blending" provisions of S. 1143 permanently entangle a misguided federal ethanol policy with state law. This bill requires that gasoline suppliers offer retailers and distributors raw gasoline that can be blended with ethanol and prohibits gas suppliers from denying retailers and distributors the opportunity to blend raw gasoline and ethanol on their own. Thus, gas suppliers would be prohibited from selling only blended ethanol to retailers and distributors. These provisions have arisen because a 2007 federal energy law requires gas suppliers to produce nine billion gallons of blended ethanol in 2008 and even more in following years. It is our strong hope that these misguided federal laws will be repealed. Nonetheless, to meet this requirement, many large gas suppliers have decided to stop supplying raw gasoline to retailers and distributors and to offer only blended ethanol

instead. If gas suppliers only offer blended ethanol, then local retailers and distributors will be prevented from obtaining federal tax credits for blending ethanol.

While we understand that local retailers and distributors want to preserve the opportunity to obtain blending tax credits, we don't believe it is wise to further support federal ethanol policies that have been proven ineffective and, in many ways, counterproductive. It is well documented that increasing ethanol production and consumption has not and likely will not lower gas prices or increase the nation's energy independence. Moreover, ethanol usage in its current form is not the environmentally-friendly alternative that many suggest it is. In fact, one recent study conducted by MIT showed that, on a life-cycle basis, gasoline and ethanol produce roughly the same amount of greenhouse gases. The federal policy of subsidizing and mandating ethanol production has caused food prices to rise and increased the amount of land devoted to farming, which often has damaging consequences to the environment.

As every day passes, there seems to be more evidence indicating that the federal ethanol policy is a bad idea and needs to be abandoned. The debacle of the federal government's ethanol policy is so bad that even the New York Times has stated in a recent editorial that "[i]t is time to end an outdated tax break for corn ethanol and to call a timeout in the fivefold increase in ethanol production mandated in the 2007 energy bill." It is time to remove our heads from the sand about ethanol and ensure that our laws do not reflect this flawed premise that ethanol will solve our current energy crisis.

Third, we are also concerned that providing preference to local retailers and distributors over the out-of-state suppliers could be unconstitutional under the Commerce Clause of the U.S. Constitution because this preference discriminates against interstate commerce. The Commerce Clause prevents states from regulating commerce in a manner that prefers in-state interests over out-of-state interests. In fact, the Supreme Court stated in *Brown-Forman Distillers Corp. v. New York State Liquor Authority* that while "a State may seek lower prices for its consumers, it may not insist that producers or consumers in other States surrender whatever competitive advantages they may possess." This legislation appears to do exactly that by insisting that out-of-state gas suppliers surrender their natural competitive advantage of controlling the supply of gas by dictating that they cannot supply only blended ethanol to retailers and distributors in South Carolina.

Fourth, even if we did not have these concerns about the blending provisions in S. 1143, we would veto this bill because it was added through the unconstitutional practice of bobtailing. This administration has consistently vetoed legislation which violates Article III, Section 17, of the South Carolina Constitution, which provides that "every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." S. 1143 clearly violates this mandate and would undoubtedly be held to be unconstitutional by our Supreme Court.

The Honorable André Bauer
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June 11, 2008

S. 1143 was introduced by Senator McConnell with the title reflecting a single subject of the sales tax holiday for energy efficient products. The title of S. 1143 remained unchanged throughout the legislative process. The Senate passed the bill with this title intact and the bill related only to the single subject stated in the title. The House amended S. 1143 by adding a section that provided for an exemption from sales tax holiday for firearms. While this broadened the bill, the amendment remained related to sales tax holidays. Thus, as passed by the House the bill would very likely pass constitutional muster. However, when the bill was returned to the Senate, the bill was amended to include the ethanol blending provisions. This amendment is totally unrelated to the other provisions of the bill and, therefore, not within the "single subject" of the title.

The South Carolina Supreme Court has most recently addressed the "single subject" or "bobtail" issue in *Sloan v. Wilkins*. Citing numerous prior cases, the Court said that the "purpose of Article III, Section 17 is (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the state of the matters with which the General Assembly concerns itself."

The ethanol blending amendment violates all three purposes the Supreme Court established because it was never introduced as a separate bill nor discussed as an amendment in any subcommittee or committee of the General Assembly. Thus, the deliberative process that is supposedly the hallmark of the legislative process was by-passed and the public was denied opportunity to be informed of and participate in the consideration of the ethanol blending provisions.

This constitutional infirmity was recognized by Senator McConnell, the author of the original bill. When the ethanol blending amendment was brought up on the Senate floor, he stated that it was unconstitutional and announced he wanted to be recorded as voting against it. While Senator McConnell and I do not always agree, we are in agreement that this measure is unconstitutional.

For these reasons, we are vetoing S. 1143, R-356.

Sincerely,



Mark Sanford

Op-ed – South Carolina

Subsidized guns, dishwashers and gas add up to lawsuit loss

By CINDI ROSS SCOPPE - Associate Editor

THE GOVERNOR is usually making a judgment call when he accuses legislators of squandering tax dollars.

But in the case of S.1143, which Gov. Mark Sanford vetoed two weeks ago, that charge has nothing to do with priorities. This is a lawsuit waiting to happen and a lawsuit the state is sure to lose, at considerable expense to taxpayers.

While the statement Rep. James Smith put in the House Journal might seem a bit melodramatic to those of us who haven't just returned from fighting the Taliban in Afghanistan, he was spot-on: "In swearing an oath to hold this office and to offer my life in defense of this Country and it's Constitution, I cannot vote to concur with the Senate Amendments to S. 1143, which is facially unconstitutional."

The bill started off as a sales tax break for energy-efficient appliances. But a week before the session ended, the Senate tacked on an amendment no one had seen before forcing oil companies to sell raw, or "blendable," gasoline to the distributors in our state, so the distributors can "splash-blend," or mix it with ethanol, themselves.

This was a very popular idea, because the oil companies were about to stop selling blendable gasoline, and the distributors said they'd have to raise gas prices by as much as 8 cents a gallon if the Legislature didn't act.

The most obvious problem is that our state constitution requires that bills relate to "a single subject." This prevents small groups of lawmakers from joining together to pass provisions that don't have enough support to pass on their own, and it makes it easier for voters and legislators to keep up with what's in bills.

Perhaps you could tie the dishwasher tax break and the blendable fuel mandate together under a single subject if the bill had a bunch of other provisions dealing with "energy." It doesn't; it has just those two. To further complicate matters, it has a third provision — a sales tax holiday for guns — that was added when the "single subject" appeared to be sales tax exemptions.

Despite the clear language of the constitution, stringing unrelated proposals together into one bill — called "bobtailing" — is a time-honored tradition in South Carolina. It's given us some of our worst laws, from the legalization of video poker to a bribery-tainted retroactive tax break, from keeping the Barnwell nuclear waste landfill open to the nation to the first round of replacing some school property taxes with state revenue.

But in 2005, the state Supreme Court made a startling ruling. It said the constitution means what it says. The ruling wasn't ambiguous — If a bill deals with more than one

subject, the court ruled unanimously, it is unconstitutional and must be struck down — and the court reiterated its ruling on Monday, in yet another lawsuit.

But bobtailing is only one of the problems with the bill. The blendable-fuel mandate invalidates existing contracts between oil companies and distributors, which allow the companies to stop selling blendable fuel on 30 days' notice. The oil companies want to exercise that option because a 2007 federal law requires them to produce a specific amount of blended fuel, and they can't do that if they keep letting the distributors do the blending.

This is what has the S.C. Manufacturers Association and other business groups freaked out. They worry that if the Legislature can wipe out an existing contract between oil companies and distributors, it can wipe out any contract.

The U.S. and S.C. constitutions both prohibit government from interfering with contracts, although the courts have allowed it if the state demonstrates that there is a significant and legitimate public purpose for doing so, and if it uses the narrowest and least intrusive means possible to further that purpose.

It's hard to imagine how our state could meet either test.

If there's a reason for the mandate other than holding down gas prices, it didn't get much attention during fairly extensive debate, and though popular, no public purpose is met by holding down gas prices. Even if that was a legitimate state concern, there are less intrusive means: The Legislature could eliminate the gasoline tax and have twice the effect.

Add in the possibility that the mandate could violate the interstate commerce clause of the U.S. Constitution, and it would seem easy enough to round up 16 senators or 42 representatives to uphold Mr. Sanford's veto when they return to town Wednesday.

But there are two political complications.

The first is that it's Mr. Sanford's veto, and few sports are more popular at the State House than overturning Sanford vetoes.

The second is the gun-tax holiday. Few legislators want to risk ticking off the gun lobby, and it clearly wants the state to subsidize gun purchases. I thought the gun lobby's personal representative, Rep. Mike Pitts, was going to have a heart attack trying to avoid a delay in the bill's final passage, he was so animated in his attempt to round up votes. So despite the best efforts of people who actually think the Legislature ought to obey the constitution, only 10 House members voted against the bill's final passage.

The thing is, supporters aren't going to get their gun subsidy. If the veto is overturned, lawsuits will be filed, perhaps by week's end. And since the bill doesn't have a severability clause, the court won't have the option of striking down just the blendable-fuel mandate; the whole bill will go down.

Worse still, from lawmakers' perspective, Mr. Sanford will again get to say "I told you so."

But at least somebody wins: all those top-dollar attorneys big oil is going to hire to challenge the law. They'll get their fees paid by the S.C. taxpayers.

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WCSR 3925831v1

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<i>Wm. Westhausen</i>	<i>NC Petroleum Council</i>
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<i>Rob Scholte</i>	<i>NC Policy Watch</i>
<i>Bill Rowe</i>	<i>NC Justice Center</i>
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