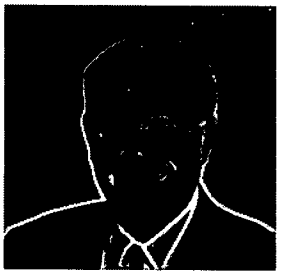
2011-2012

HOUSE JUDICIARY – SUBCOMMITTEE C

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

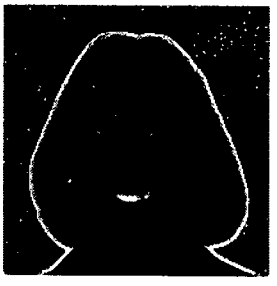
JUDICIARY SUB-COMMITTEE C: FAMILY LAW
2011-2012 SESSION



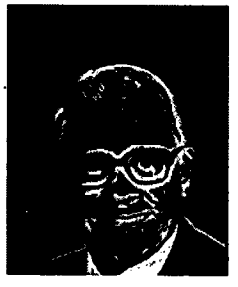
Rep. Tim Moore
Co-Chair



Rep. Johnathan Rhyne
Co-Chair



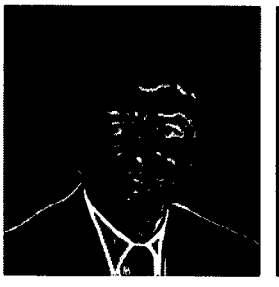
Rep. Rayne Brown



Rep. George Cleveland



Rep. Jimmy Dixon



Rep. Joe Hackney



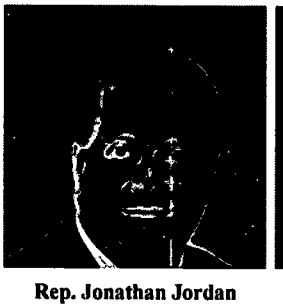
Rep. Pricey Harrison



Rep. Verla Insko



Rep. Bert Jones



Rep. Jonathan Jordan



Rep. Annie Mobley



Rep. Jennifer Weiss

House Judiciary Sub-Committee C: Family Law

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Tim Moore, Chair	Nancy Garriss	733-4838	1326	8
Rep. Johnathan Rhyne, Chair	Susan Beaupied	733-5782	2208	19
Rep. Rayne Brown	Lynn Taylor	715-0873	638	73
Rep. George Cleveland	Pamela Ahlin	715-6707	417A	30
Rep. Jimmy Dixon	Dan McPhail	715-3021	1002	67
Rep. Joe Hackney	Emily Reynolds	733-0057	612	69
Rep. Pricey Harrison	Sue Osborne	733-5771	1218	118
Rep. Verla Insko	Gina Insko	733-7208	603	70
Rep. Bert Jones	Brenda Olls	733-5779	306A1	100
Rep. Jonathan Jordan	Carlton Huffman	733-7727	418C	79
Rep. Annie Mobley	Veronica Green	733-5780	501	108
Rep. Jennifer Weiss	Cindy Douglas	715-3010	1109	103

Staff:
Wendy Graf Ray
Jan Paul

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

February 1, 2011

The Honorable Tim Moore, Co-Chair
Judiciary Subcommittee C (Family Law)
North Carolina House of Representatives
16 West Jones Street, Room 1326
Raleigh, NC 27601-1096

Dear Representative Moore:

I have asked Ms. Wendy Graf Ray and Ms. Jan Paul with the Research Division, to serve as counsel to the House Judiciary Subcommittee C (Family Law), which you co-chair. They will attend the meetings of the Subcommittee when it convenes on Wednesdays at 10:00 a.m. In accordance with the Subcommittee's directions as expressed through the Co-Chairs, they will aid in analyzing proposed legislation and drafting amendments and committee substitutes. They will staff several other committees, as well.

I have asked Ms. Ray to serve as the coordinating staff person (point person) for the subcommittee staff's efforts. I would ask that you and your subcommittee clerk consider Ms. Ray as your initial contact for staffing needs and questions for the subcommittee. The role of the coordinating staff will be to serve as the primary contact for the subcommittee chairs and subcommittee clerks to use in arranging subcommittee meetings and identifying bills to be considered. Coordinating staff also will coordinate the assignment of bills among the subcommittee staff. Most of the members of the Research Division have been asked to assume this role for one or more committees this session. If you are unable to reach Ms. Ray at any time, you should feel free to contact Ms. Paul for assistance.

My best wishes to you and the Subcommittee in its work. If I can be of any service to you or the Subcommittee, please contact me.

Yours truly,

O. Walker Reagan

O. Walker Reagan
Director of Research

OWR:wsh

cc: Hon. Thom Tillis, Speaker
Hon. Philip Berger, President Pro Tempore
Hon. Johnathan Rhyne, Jr., Co-Chair
Mr. George Hall
Ms. Wendy Graf Ray
Ms. Jan Paul
Mr. Brian Peck
Ms. Becky Cook

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

George R. Hall, Legislative Services Officer

Research Division
300 N. Salisbury Street, Suite 545
Raleigh, NC 27603-5925
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan
Director

February 2, 2011

The Honorable Johnathan Rhyne, Jr., Co-Chair
Judiciary Subcommittee C (Family Law)
North Carolina House of Representatives
16 W. Jones Street, Room 2208
Raleigh, NC 27601-1096

Dear Representative Rhyne:

I have asked Ms. Wendy Graf Ray and Ms. Jan Paul with the Research Division, to serve as counsel to the House Judiciary Subcommittee C (Family Law), which you co-chair. They will attend the meetings of the Subcommittee when it convenes on Wednesdays at 10:00 a.m. In accordance with the Subcommittee's directions as expressed through the Co-Chairs, they will aid in analyzing proposed legislation and drafting amendments and committee substitutes. They will staff several other committees, as well.

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My best wishes to you and the Subcommittee in its work. If I can be of any service to you or the Subcommittee, please contact me.

Yours truly,

O. Walker Reagan

O. Walker Reagan
Director

OWR:wsh

cc: Hon. Thom Tillis, Speaker
Hon. Philip Berger, President Pro Tempore
Hon. N. Leo Daughtry
Hon. Tim Moore., Co-Chair
Mr. George Hall
Ms. Wendy Graf Ray
Ms. Jan Paul
Mr. Brian Peck
Ms. Becky Cook

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

ATTENDANCE

Judiciary Sub-Committee C: Family Law

(Name of Committee)

DATES	02-02-11	03-09-11	03-23-11	03-30-11	04-13-11	04-20-11	05-11-11	05-18-11	05-25-11	06-01-11	06-14-11	06-14-11	06-15-11	06-15-11	
Rep. Tim Moore, Chair	X	X	X	X	X	X	X	X	X	X	X	X		X	
Rep. Johnathan Rhyne, Chair	X	X	X	X	X	X	X		X	X			X	X	
Rep. Rayne Brown	X	X	X	X	X	X	X	X	X	X		X	X	X	
Rep. George Cleveland	X	X		X	X	X		X	X		X	X	X	X	
Rep. Jimmy Dixon	X	X	X	X	X	X	X	X	X	X	X			X	
Rep. Joe Hackney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Rep. Pricey Harrison				X			X	X	X			X	X		
Rep. Verla Insko		X	X	X	X	X	X	X	X	X		X	X		
Rep. Bert Jones	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Rep. Jonathan Jordan	X	X	X	X	X	X	X	X	X	X		X	X	X	
Rep. Annie Mobley	X	X	X	X	X	X	X	X		X	X	X	X		
Rep. Jennifer Weiss	X	X	X	X	X	X	X	X	X	X	X	X		X	
Staff:															
Wendy Graf Ray	X	X	X	X	X	X				X	X	X		X	
Jan Paul	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Kory Goldsmith							X	X	X	X					
Brenda Carter													X		

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, February 2, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, February 2, 2011, in Room 415 of the Legislative Office Building. The following members were present:
Johnathan Rhyne, Chairman, Tim Moore, Chairman; Representatives Brown, Cleveland, Dixon, Hackney, Jones, Jordan, Mobley, and Weiss.

Rep. Rhyne, Chairman, called the meeting to order. Rep. Rhyne recognized Rep. Tim Moore as the other Chair of the meeting. The Sgt. of Arms staff and House pages were recognized by Rep. Rhyne.

Rep. Rhyne said the meeting was organizational. The members were called upon to introduce themselves.

With no further business, the meeting adjourned at 10:20 a.m.

Respectfully submitted,

Representative Johnathan Rhyne
Chairman

Nancy Garriss
Committee Clerk

Nancy Garriss (Rep. Tim Moore)

From: Susan Beaupied (Rep. Rhyne)
Sent: Monday, January 31, 2011 4:52 PM
To: @House/Judiciary/Judiciary C; @HouseCommitteeNotice
Cc: Rep. Jonathan Jordan
Subject: House Judiciary C committee meeting notice

HOUSE OF REPRESENTATIVES
NOTICE OF COMMITTEE MEETING
AND
BILL SPONSOR NOTICE

You are hereby notified that the Judiciary Sub-Committee C on Family Law will meet as follows:

DAY AND DATE: **Wednesday, February 2, 2011**

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

LOCATION: **Room 415, Legislative Office Building**

The following will be considered:

This will be an organizational meeting.

Respectfully,
Representative Johnathan L. Rhyne
Representative Tim Moore

VISITOR REGISTRATION SHEET

Jud. Sub C — Name of Committee

2/2/11 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Rosenberg	Action For Children
Kerri Burke	McGuireWoods Consulting
Paula A. Wolff	NC NOW
Kristen Laster	Fetzer Strategic
Mark Bibbs	Bibbs Law Office
Philip R. Isley	Blanchard Miller Lewis + Isley / Advocates for Justice

VISITOR REGISTRATION SHEET

Jud. Sub C 2/2/11

Name of Committee Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth Roonem	NCBWA
Daniel Baum	Troutman Sanders
Paula A. Wolf	NC NOW

HOUSE PAGES

NAME OF COMMITTEE Jud Sub 2 DATE 2-2-11

1. Name: Traci Leak
   County: Rowan
   Sponsor: Warren H.
2. Name: Carrie Bryant
   County: Brunswick
   Sponsor: Denny Hill
3. Name: Skyler Stroud
   County: Iredell
   Sponsor: Howard
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

SGT-AT-ARM

1. Name: Carlton Adams
2. Name: Martha Gadison
3. Name: Garland Shepheard
4. Name: William MacRae

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, March 9, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, March 9, 2011, at 10:00 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Tim Moore called the meeting to order. Rep. Moore recognized the pages.

The following bills were considered:

HB 199, Req. DV Victim/List Prior Action Against Def. (Rep. Rhyne, Primary Sponsor). Chair Moore recognized Rep. Rhyne to speak on the bill. Rep. Rhyne stated no vote would be taken today. Discussion of the bill followed by committee members. The public was invited to speak and Beth Froehling with the NC Coalition Against Domestic Violence spoke on the bill. There was no further discussion.

HB 219, Sex Offender Registry Amendments. (Representatives Moore, Hager, Cook, and Pridgen, Primary Sponsors). Rep. Rhyne presided on HB 219. Rep. Rhyne recognized Rep. Moore. A proposed committee substitute was placed before the members and a motion was accepted from Rep. Weiss to place the proposed committee substitute before the committee. Rep. Moore explained the bill. Discussion followed. Rep. Rhyne recognized Rep. Jones for a motion of a favorable report to the proposed committee substitute, which changes the title, and unfavorable to the original bill. With the majority being in favor, the motion carried.

The meeting adjourned at 10:40 a.m.

Respectfully submitted,

Representative Tim Moore

Nancy Garriss
Committee Assistant

Representative Johnathan Rhyne

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, March 9, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 199	Req. DV Victim/List Prior Action Against Def.	Representative Rhyne, Jr.
HB 219	Sex Offender Registry Amendments.	Representative Moore Representative Hager Representative Cook Representative Pridgen

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **March 03, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

AGENDA

House Judiciary Subcommittee C

Wednesday, March 9, 2011
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

HB 199	**Req. DV Victim/List Prior Action Against Def.** **Representative Rhyne, Jr., Sponsor**
HB 219	**Sex Offender Registry Amendments** **Representative Moore, Sponsor** **Representative Hager, Sponsor** **Representative Cook, Sponsor** **Representative Pridgen, Sponsor**

ADJOURNMENT

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub-committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 219 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON REQUIRED TO REGISTER AS A SEX OFFENDER MUST INDICATE ON THE INITIAL REGISTRATION FORM THE NAME UNDER WHICH THE PERSON WAS CONVICTED FOR THE SEX OFFENSE, TO PROVIDE THAT THE REGISTRANT MUST ALSO NOTIFY THE APPROPRIATE SHERIFF OF ANY NAME CHANGE BY THE REGISTRANT AND INCLUDE NAME CHANGES AS PART OF THE VERIFICATION PROCEDURE, TO DIRECT THE DIVISION OF CRIMINAL STATISTICS TO MAINTAIN THE STATEWIDE REGISTRY SO THAT A MEMBER OF THE PUBLIC MAY CONDUCT SEX OFFENDER SEARCHES USING ANY NAME OR ALIAS OF A REGISTRANT, TO CLARIFY THAT SEX OFFENDERS MAY NOT CHANGE THEIR NAME PURSUANT TO CHAPTER 101 OF THE GENERAL STATUTES, TO AMEND THE LAW REGARDING THE VENUE IN WHICH TO FILE A PETITION TO TERMINATE A SEX OFFENDER REGISTRATION REQUIREMENT, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE FOR COMPUTER AND SOFTWARE REPAIRS TO THE STATEWIDE REGISTRY COMPUTER SYSTEM.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ 

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

HOUSE BILL 199

Short Title:	Req. DV Victim/List Prior Action Against Def.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 2, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING ANY PERSON SEEKING RELIEF PURSUANT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER TO INCLUDE IN THE COMPLAINT OR MOTION FILED WHETHER THE PERSON HAS PREVIOUSLY FILED AN ACTION OR MOTION FOR DOMESTIC VIOLENCE AGAINST THE DEFENDANT AND IF SO, THE DISPOSITION OF THAT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2(a) reads as rewritten:

"(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Upon filing a civil action or motion under this Chapter, the person seeking relief shall include in the complaint or motion filed (i) whether the person has previously filed any action or motion for domestic violence against the defendant and (ii) the disposition of the action, if applicable. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 2. This act becomes effective October 1, 2011.

HOUSE BILL 219

Short Title:	Sex Offender Registry Amendments.	(Public)
Sponsors:	Representatives T. Moore, Hager, Cook, and Pridgen (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C, if favorable, Appropriations Subcommittee on Justice and Public Safety.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON REQUIRED TO REGISTER AS A SEX OFFENDER MUST INDICATE ON THE INITIAL REGISTRATION FORM THE NAME UNDER WHICH THE PERSON WAS CONVICTED FOR THE SEX OFFENSE, TO PROVIDE THAT THE REGISTRANT MUST ALSO NOTIFY THE APPROPRIATE SHERIFF OF ANY NAME CHANGE BY THE REGISTRANT AND INCLUDE NAME CHANGES AS PART OF THE VERIFICATION PROCEDURE, TO DIRECT THE DIVISION OF CRIMINAL STATISTICS TO MAINTAIN THE STATEWIDE REGISTRY SO THAT A MEMBER OF THE PUBLIC MAY CONDUCT SEX OFFENDER SEARCHES USING ANY NAME OR ALIAS OF A REGISTRANT, TO CLARIFY THAT SEX OFFENDERS MAY NOT CHANGE THEIR NAME PURSUANT TO CHAPTER 101 OF THE GENERAL STATUTES, TO AMEND THE LAW REGARDING THE VENUE IN WHICH TO FILE A PETITION TO TERMINATE A SEX OFFENDER REGISTRATION REQUIREMENT, AND TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE FOR COMPUTER AND SOFTWARE REPAIRS TO THE STATEWIDE REGISTRY COMPUTER SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.7(b) reads as rewritten:

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

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

(1a) A statement indicating what the person's name was at the time of the conviction for the offense that requires registration; what alias, if any, the person was using at the time of the conviction of that offense; and the name of the person as it appears on the judgment imposing the sentence on the person for the conviction of the offense.

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

(3) A current photograph taken by the sheriff, without charge, at the time of registration.

(4) The person's fingerprints taken by the sheriff, without charge, at the time of registration.

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

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

(7) Any online identifier that the person uses or intends to use."

SECTION 2. The catch line for G.S. 14-208.9 reads as rewritten:

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

SECTION 3. G.S. 14-208.9 is amended by adding a new subsection to read:

"(f) If a person required to register changes his or her name pursuant to Chapter 101 of the General Statutes or by any other method, then the person shall, within 10 days, report in person to the sheriff of the county with whom the person registered to provide the name change to the sheriff. The sheriff shall immediately forward this information to the Division."

SECTION 4. G.S. 14-208.9A(a)(3) reads as rewritten:

"(3) The verification form shall be signed by the person and shall indicate the following:

a. Whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

b. Whether the person still uses or intends to use any online identifiers last reported to the sheriff. If the person has any new or different online identifiers, then the person shall provide those online identifiers to the sheriff.

c. Whether the person still uses or intends to use the name under which the person registered and last reported to the sheriff. If the person has any new or different name, then the person shall provide that name to the sheriff."

SECTION 5. G.S. 14-208.12A(a) reads as rewritten:

"(a) Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court ~~in the district where the person resides~~ to terminate the 30-year registration requirement if the person has not been convicted of a subsequent offense requiring registration under this Article.

If the reportable conviction is for an offense that occurred in North Carolina, the petition shall be filed in the district where the person was convicted of the offense.

If the reportable conviction is for an offense that occurred in another state, the petition shall be filed in the district where the person resides. A person who petitions to terminate the registration requirement for a reportable conviction that is an out-of-state offense shall also do the following: (i) provide written notice to the sheriff of the county where the person was convicted that the person is petitioning the court to terminate the registration requirement and (ii) include with the petition at the time of its filing, an affidavit, signed by the petitioner, that verifies that the petitioner has notified the sheriff of the county where the person was convicted of the petition and that provides the mailing address and contact information for that sheriff."

SECTION 6. G.S. 14-208.14(a)(3) reads as rewritten:

"(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, change of name, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner."

SECTION 7. G.S. 14-208.14 is amended by adding a new subdivision to read:

"(4a) To maintain the system for public access so that a registrant's full name, any aliases, and any legal name changes are cross-referenced and a member of the public may conduct a search of the system for a registrant under any of those names."

SECTION 8. G.S. 101-5 reads as rewritten:

"**§ 101-5. Clerk to order change; certificate and record.**

~~If~~ Except as prohibited by G.S. 101-6(c), if the clerk thinks that good and sufficient reason exists for the change of name, it shall be his duty to issue an order changing the name of the applicant from his true name to the name sought to be adopted. Such order shall contain the true name, the county of birth, the date of birth, the full name of parents as shown on birth certificate, and the name sought to be adopted. He shall issue to the applicant a certificate under his hand and seal of office, stating the change made in the applicant's name, and shall also record said application and order on the docket of special proceedings in his court. He shall forward the order to the State Registrar of Vital Statistics on a form provided by him. If the applicant was born in North Carolina, the State Registrar shall note the change of name of the individual or individuals specified in the order on the birth certificate of that individual or those individuals and shall notify the register of deeds in the county of birth. If the applicant was born in another state of the United States, the State Registrar shall forward the notice of change of name to the registration office of the state of birth."

SECTION 9. There is appropriated from the General Fund to the Department of Justice the sum of ten thousand dollars ($10,000) for the 2011-2012 fiscal year to make repairs to the computer system and software in the Division of Criminal Statistics that houses and runs the statewide sex offender registry so that a search on a registrant by a member of the public can be done by using any of the registrant's names or aliases.

SECTION 10. Sections 1, 2, 3, 4, 6, and 7 of this act become effective December 1, 2011, and apply to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2011, and to persons who are registered under Article 27 of Chapter 14 of the General Statutes prior to December 1, 2011, and continue to be registered on December 1, 2011. However, any person registered under Article 27 of Chapter 14 of the General Statutes prior to December 1, 2011, and continuing to be registered on December 1, 2011, shall not be in violation of the registration, verification, and reporting requirements regarding a person's name, if the person provides the required information at the first verification of information that occurs on or after December 1, 2011. Section 5 of this act becomes effective December 1, 2011, and applies to petitions filed on or after that date. Section 8 of this act is effective when it becomes law and applies to petitions filed or pending on or after that date. The remainder of this act becomes effective July 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 219
PROPOSED COMMITTEE SUBSTITUTE H219-PCS30145-SA-6

Short Title: Sex Offender Registry Amendments. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON REQUIRED TO REGISTER AS A SEX OFFENDER MUST INDICATE ON THE INITIAL REGISTRATION FORM THE NAME UNDER WHICH THE PERSON WAS CONVICTED FOR THE SEX OFFENSE, TO PROVIDE THAT THE REGISTRANT MUST ALSO NOTIFY THE APPROPRIATE SHERIFF OF ANY NAME CHANGE BY THE REGISTRANT AND INCLUDE NAME CHANGES AS PART OF THE VERIFICATION PROCEDURE, TO DIRECT THE DIVISION OF CRIMINAL STATISTICS TO MAINTAIN THE STATEWIDE REGISTRY SO THAT A MEMBER OF THE PUBLIC MAY CONDUCT SEX OFFENDER SEARCHES USING ANY NAME OR ALIAS OF A REGISTRANT, TO CLARIFY THAT SEX OFFENDERS MAY NOT CHANGE THEIR NAME PURSUANT TO CHAPTER 101 OF THE GENERAL STATUTES, AND TO AMEND THE LAW REGARDING THE VENUE IN WHICH TO FILE A PETITION TO TERMINATE A SEX OFFENDER REGISTRATION REQUIREMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-208.7(b) reads as rewritten:

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

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

(1a) A statement indicating what the person's name was at the time of the conviction for the offense that requires registration; what alias, if any, the person was using at the time of the conviction of that offense; and the name of the person as it appears on the judgment imposing the sentence on the person for the conviction of the offense.

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

(3) A current photograph taken by the sheriff, without charge, at the time of registration.

(4) The person's fingerprints taken by the sheriff, without charge, at the time of registration.

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form

shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student.

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

(7) Any online identifier that the person uses or intends to use."

SECTION 2. The catch line for G.S. 14-208.9 reads as rewritten:

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

SECTION 3. G.S. 14-208.9 is amended by adding a new subsection to read:

"(f) If a person required to register changes his or her name pursuant to Chapter 101 of the General Statutes or by any other method, then the person shall, within three business days, report in person to the sheriff of the county with whom the person registered to provide the name change to the sheriff. The sheriff shall immediately forward this information to the Division."

SECTION 4. G.S. 14-208.9A(a)(3) reads as rewritten:

"(3) The verification form shall be signed by the person and shall indicate the following:

a. Whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

b. Whether the person still uses or intends to use any online identifiers last reported to the sheriff. If the person has any new or different online identifiers, then the person shall provide those online identifiers to the sheriff.

c. Whether the person still uses or intends to use the name under which the person registered and last reported to the sheriff. If the person has any new or different name, then the person shall provide that name to the sheriff."

SECTION 5. G.S. 14-208.12A(a) reads as rewritten:

"(a) Ten years from the date of initial county registration, a person required to register under this Part may petition the superior court ~~in the district where the person resides~~ to terminate the 30-year registration requirement if the person has not been convicted of a subsequent offense requiring registration under this Article.

If the reportable conviction is for an offense that occurred in North Carolina, the petition shall be filed in the district where the person was convicted of the offense.

If the reportable conviction is for an offense that occurred in another state, the petition shall be filed in the district where the person resides. A person who petitions to terminate the registration requirement for a reportable conviction that is an out-of-state offense shall also do the following: (i) provide written notice to the sheriff of the county where the person was convicted that the person is petitioning the court to terminate the registration requirement and (ii) include with the petition at the time of its filing, an affidavit, signed by the petitioner, that verifies that the petitioner has notified the sheriff of the county where the person was convicted of the petition and that provides the mailing address and contact information for that sheriff."

SECTION 6. G.S. 14-208.14(a)(3) reads as rewritten:

"(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, change of

name, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner."

SECTION 7. G.S. 14-208.14 is amended by adding a new subdivision to read:

"(4a) To maintain the system for public access so that a registrant's full name, any aliases, and any legal name changes are cross-referenced and a member of the public may conduct a search of the system for a registrant under any of those names."

SECTION 8. G.S. 101-5 reads as rewritten:

"**§ 101-5. Clerk to order change; certificate and record.**

~~If~~ Except as prohibited by G.S. 101-6(c), if the clerk thinks that good and sufficient reason exists for the change of name, it shall be his duty to issue an order changing the name of the applicant from his true name to the name sought to be adopted. Such order shall contain the true name, the county of birth, the date of birth, the full name of parents as shown on birth certificate, and the name sought to be adopted. He shall issue to the applicant a certificate under his hand and seal of office, stating the change made in the applicant's name, and shall also record said application and order on the docket of special proceedings in his court. He shall forward the order to the State Registrar of Vital Statistics on a form provided by him. If the applicant was born in North Carolina, the State Registrar shall note the change of name of the individual or individuals specified in the order on the birth certificate of that individual or those individuals and shall notify the register of deeds in the county of birth. If the applicant was born in another state of the United States, the State Registrar shall forward the notice of change of name to the registration office of the state of birth."

SECTION 9. Sections 1, 2, 3, 4, 6, and 7 of this act become effective December 1, 2011, and apply to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2011, and to persons who are registered under Article 27 of Chapter 14 of the General Statutes prior to December 1, 2011, and continue to be registered on December 1, 2011. However, any person registered under Article 27 of Chapter 14 of the General Statutes prior to December 1, 2011, and continuing to be registered on December 1, 2011, shall not be in violation of the registration, verification, and reporting requirements regarding a person's name, if the person provides the required information at the first verification of information that occurs on or after December 1, 2011. Section 5 of this act becomes effective December 1, 2011, and applies to petitions filed on or after that date. Section 8 of this act is effective when it becomes law and applies to petitions filed or pending on or after that date. The remainder of this act is effective when it becomes law.

HOUSE PCS 219:
Sex Offender Registry Amendments

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C, if favorable, Appropriations Subcommittee on Justice and Public Safety	**Date:**	March 8, 2011
Introduced by:	Reps. T. Moore, Hager, Cook, Pridgen	**Prepared by:**	Susan Sitze Staff Attorney
Analysis of:	PCS to First Edition H219-CSSA-6		

SUMMARY: ***The Proposed Committee Substitute for House Bill 219 makes several changes to the requirements of a sex offender to provide information regarding names used, requires the State to provide public searches by name or alias, and amends the venue for filing a petition to terminate a sex offender registration requirement.***

BILL ANALYSIS:

Section 1 requires a person required to register as a sex offender to indicate their name at the time of conviction for the offense requiring registration as well as any alias they were using at that time and the name as it appears on the judgment imposing the sentence.

Section 2 and 3 require a person required to register as a sex offender to notify the sheriff within 3 business days of any name change.

Section 4 requires verification of the name being used whenever a person required to register as a sex offender verifies their registration as required by law.

Section 5 changes the location where a petition to terminate a registration requirement is filed. If the person was convicted in North Carolina, the petition should be filed in the district where the person was convicted of the offense. If the offense occurred outside of North Carolina, the petition should be filed in the district where the person resides and requires a person with an out-of-state conviction to also (i) provide written notice of the petition to the sheriff of the county where they were convicted and (ii) include with the petition an affidavit that verifies that they have complied with that notification requirement and provides the mailing address and contact information for that sheriff.

Section 6 makes a conforming change to sections 1-4.

Section 7 requires the Division of Criminal Statistics to maintain the public access so that the public may search the sex offender registration system under the registrant's full name, any aliases, and any legal name changes and that all are cross-referenced.

Section 8 amends G.S. 101-5 to clarify that if a person is a registered sex offender, and therefore ineligible to have their name changed under Chapter 101 of the General Statutes, that the clerk of court has no duty to issue a name change order.

EFFECTIVE DATE: Sections 1, 2, 3, 4, 6, and 7 of this act become effective December 1, 2011, and apply to persons whose initial registration under Article 27A of Chapter 14 of the General Statutes occurs on or after December 1, 2011, and to persons who are registered under Article 27 of Chapter 14 of the General Statutes prior to December 1, 2011, and continue to be registered on December 1, 2011. However, any person registered under Article 27 of Chapter 14 of the General Statutes prior to December 1, 2011, and continuing to be registered on December 1, 2011, shall not be in violation of the registration, verification, and reporting requirements regarding a person's name, if the person provides

the required information at the first verification of information that occurs on or after December 1, 2011. Section 5 of this act becomes effective December 1, 2011, and applies to petitions filed on or after that date. Section 8 of this act is effective when it becomes law and applies to petitions filed or pending on or after that date. The remainder of this act is effective when it becomes law.

HOUSE PAGES

NAME OF COMMITTEE Judiciary/Sub C DATE 3/9/2011

1. Name: Rose-Webb Evett

   County: Wilson

   Sponsor: Thom Tillis

2. Name: Zac Wilson

   County: Wake

   Sponsor: Rep. Martin

3. Name: _____

   County: _____

   Sponsor: _____

4. Name: _____

   County: _____

   Sponsor: _____

5. Name: _____

   County: _____

   Sponsor: _____

Committee Sergeants at Arms

NAME OF COMMITTEE JUDICIARY SUB C

DATE: 3/9/2011 Room: 415

House Sgt-At Arms:

1. Name: BILL MACRAE
2. Name: R.L. CARTER
3. Name: _____
4. Name: _____
5. Name: _____

Senate Sgt-At Arms:

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C: Family Law — March 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Meaney	NC DOJ
Kay Emanuel	Legislative Reporting Services
Kay Paksoy	NASW-NC
MARK BIBBS	BIBBS LAW OFFICE
Lea Tuebeth	NCAJ

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C: Family Law — March 9, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Perdue	Sentencing COMM.
Pamela Walker	NC DOC
Cynthia Williams	NCDOC
Chris Agner	DOA
BILL Cook	District 6 House Representative

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, March 23, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, March 23, 2011, at 10:00 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Dixon, Hackney, Insko, Jones, Jordan, Mobley, and Weiss.

Representative Johnathan Rhyne presided and called the meeting to order. Representative Rhyne recognized the pages.

The following bills were considered:

HB 144, Increase Family Court Fee (Representatives Glazier, Parfitt, and McLawhorn, Primary Sponsors). Chair Rhyne recognized Representative Parfitt to speak on the bill. Discussion followed and a request was made to get statistics and costs from AOC and staff. Chair Rhyne tabled the bill until the next meeting.

HB 176, Review DV Program Participation (Representatives McLawhorn, Ross, and Farmer-Butterfield, Primary Sponsors). Chair Rhyne said the bill would not be taken up today.

HB 199, Req. DV Victim/List Prior Action Against Def. (Representative Rhyne, Jr., Primary Sponsor). Chair Rhyne said the bill was heard previously, and it is being modified.

HB 239, Grandparents' Visitation Rights (Representatives Brisson, Howard, and Hurley, Primary Sponsors). Chair Rhyne recognized Representative Brisson to explain the bill. Chair Rhyne recognized Representative Howard to speak on the bill, and then Chair Rhyne recognized Representative Hurley to speak on the bill. Discussion followed. Chair Rhyne appointed a subcommittee to study the bill. Members of the subcommittee are Representatives R. Brown, Dixon, Insko, Jordan, and Weiss.

The meeting adjourned at 10:15 a.m.

Respectfully submitted,

Representative Johnathan Rhyne

Nancy Garriss
Committee Assistant

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, March 23, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 144	Increase Family Court Fee.	Representative Glazier Representative Parfitt Representative McLawhorn
HB 176	Review DV Program Participation.	Representative McLawhorn Representative Ross Representative Farmer-Butterfield
HB 199	Req. DV Victim/List Prior Action Against Def.	Representative Rhyne, Jr.
HB 239	Grandparents' Visitation Rights.	Representative Brisson Representative Howard Representative Hurley

Respectfully,
Representative Tim Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **March 17, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

AGENDA

House Judiciary Subcommittee C

Wednesday, March 23, 2011
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Johnathan Rhyne, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

HB 144	**Increase Family Court Fee** **Reps. Glazier, Parfitt, McLawhorn, Sponsors**
HB 176	**Review DV Program Participation** **Reps. McLawhorn, Ross, Farmer-Butterfield, Sponsors**
HB 199	**Req. DV Victim/List Prior Action Against Def.** **Rep. Rhyne, Jr., Sponsor**
HB 239	**Grandparents' Visitation Rights** **Reps. Brisson, Howard, Hurley, Sponsors**

ADJOURNMENT

H 1

HOUSE BILL 144*

Short Title:	Increase Family Court Fee.	(Public)
Sponsors:	Representatives Glazier, Parfitt, and McLawhorn (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C, if favorable, Finance.	

February 21, 2011

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE AUTHORIZED TO BE CHARGED TO PERSONS RECEIVING THE SERVICES OF A SUPERVISED VISITATION AND EXCHANGE CENTER THROUGH A FAMILY COURT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-314.1 reads as rewritten:

"**§ 7A-314.1. Family court fees.**

(a) The Administrative Office of the Courts may charge a uniform fee of not more than ~~thirty dollars ($30.00)~~ fifty dollars ($50.00) per hour to persons receiving the services of a supervised visitation and exchange center through a family court program. The fees collected under this section may be used by the Director of the Administrative Office of the Courts to support the continued operation of supervised visitation and exchange centers which provide services to family court clients regarding domestic violence, substance abuse, mental illness, parental alienation, and other issues.

(b) The Director of the Administrative Office of the Courts may establish a procedure for persons to apply for a reduction in the fee, based upon the person's ability to pay as a result of indigence, status as a victim of domestic violence, or other circumstances."

SECTION 2. This act becomes effective July 1, 2011.

HOUSE BILL 144:
Increase Family Court Fee

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C, if favorable, Finance	**Date:**	March 23, 2011
Introduced by:	Reps. Glazier, Parfitt, McLawhorn	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 144 would increase the maximum fee that may be charged for services of a supervised visitation and exchange center through a family court program from $30 per hour to $50 per hour.

[As introduced, this bill was identical to S43, as introduced by Sen. Mansfield, which is currently in Senate Finance.]

CURRENT LAW: The North Carolina Administrative Office of the Courts facilitates the development, implementation, oversight, and support of family courts throughout the State. G.S. 7A-314.1 authorizes the Administrative Office of the Courts to charge a fee up to $30 per hour to persons receiving the services of a supervised visitation and exchange center through a family court program, and the fees collected may be used to support the continued operation of the centers.

BILL ANALYSIS: House Bill 144 would increase the fee authorized to be charged for services of a supervised visitation and exchange center through a family court program from a maximum of $30 per hour to a maximum of $50 per hour.

EFFECTIVE DATE: The act would become effective July 1, 2011.

H144-SMSU-9(e1)v1

HOUSE BILL 176

Short Title:	Review DV Program Participation.	(Public)
Sponsors:	Representatives McLawhorn, Ross, and Farmer-Butterfield (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR REVIEW OF A DEFENDANT'S PARTICIPATION IN A COURT-ORDERED ABUSER TREATMENT PROGRAM, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(12) reads as rewritten:

"(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program. The probation officer shall forward a copy of the probation judgment to the program and request to be notified of any violations of program rules by the defendant. The court shall review the defendant's participation in the program within 30 days of a notification that the defendant has violated program rules or failed to complete the program within the specified time period for completion. The notification of the review shall be conducted according to the procedures set forth in G.S. 15A-1342(d)."

SECTION 2. This act becomes effective December 1, 2011, and applies to defendants placed on probation on or after that date.

HOUSE BILL 176:
Review DV Program Participation

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	March 17, 2011
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 176 would require the following: that a defendant attending an abuser treatment program abide by all program rules; that the probation officer request notification of any rules violations; and that there be a court review within 30 days of notification that defendant violated the rules or failed to complete the program on time. Notice of the review must follow statutory procedures.***

CURRENT LAW: G.S. 15A-1343(12) provides that a court may order a defendant who has been found responsible for acts of domestic violence to attend and complete an abuser treatment program approved by the Domestic Violence Commission, unless the court finds that such would not be in the best interests of justice.

BILL ANALYSIS: House Bill 176 would add to G.S. 15A-1343(12) requirements that a defendant abide by all rules of the abuser treatment program and that the probation officer provide the program with a copy of the probation judgment and request notification if the defendant violates programs rules or fails to complete the program within the specified time period. Notice of the review must be conducted according to the procedures currently set out in G.S. 15A-1342(d), "Mandatory Review of Probation." This section requires the probation officer to file a probation violation report and provide reasonable notice of the hearing to the defendant.

EFFECTIVE DATE: The act becomes effective December 1, 2011.

HOUSE BILL 199

Short Title:	Req. DV Victim/List Prior Action Against Def.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 2, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING ANY PERSON SEEKING RELIEF PURSUANT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER TO INCLUDE IN THE COMPLAINT OR MOTION FILED WHETHER THE PERSON HAS PREVIOUSLY FILED AN ACTION OR MOTION FOR DOMESTIC VIOLENCE AGAINST THE DEFENDANT AND IF SO, THE DISPOSITION OF THAT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2(a) reads as rewritten:

"(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Upon filing a civil action or motion under this Chapter, the person seeking relief shall include in the complaint or motion filed (i) whether the person has previously filed any action or motion for domestic violence against the defendant and (ii) the disposition of the action, if applicable. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 2. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 239

Short Title:	Grandparents' Visitation Rights.	(Public)
Sponsors:	Representatives Brisson, Howard, and Hurley (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 8, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR AN EXPANSION OF RIGHTS UNDER EXISTING LAW REGARDING GRANDPARENT VISITATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.2(b1) reads as rewritten:

"(b1) An order for custody of a minor child may provide visitation rights for any grandparent of the child as the court, in its discretion, deems appropriate. ~~As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child.~~ Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights."

SECTION 2. G.S. 50-13.2A reads as rewritten:

"**§ 50-13.2A. Action for visitation ~~of an adopted grandchild.~~by grandparent.**

(a) A biological grandparent may institute an action or proceeding for visitation rights with a ~~child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child.~~child under the provisions of this section. Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights.

(b) The court shall determine grandparent visitation rights on a case-by-case basis. In awarding grandparent visitation, the court may determine the time, place, and circumstances of visitation. For purposes of this section, visitation shall not include custody. A court may award visitation rights only if it determines that visitation is in the best interest of the child. An order awarding visitation rights shall contain findings of fact ~~which~~ that support the determination by the judge of the best interest of the child. In determining the best interest of the child, the court shall consider each the following:

(1) Whether there is a preexisting relationship between the grandparent and the child, or the willingness of the grandparent to encourage a close relationship between the child and the parent.

(2) The willingness of the child to develop a relationship with the grandparent, if the court determines that the child is of sufficient maturity to make that decision.

(3) The reasonableness or lack of reasonableness of the custodial parent in allowing, restricting, or denying visitation to the grandparent in the past.

(4) The mental and physical health of the child.
(5) The mental and physical health of the grandparent.
(6) Whether the circumstances and amount of visitation will substantially interfere with the right of the parent to exercise his or her parental authority.
(7) Any other relevant factors the court deems necessary in determining the best interest of the child.

There is a rebuttable presumption that visitation by a grandparent is not in the best interest of the child if the child's biological parents agree that the grandparent should not be awarded visitation rights. Procedure, venue, and jurisdiction shall be the same as in an action for custody."

SECTION 3. G.S. 50-13.5(j) reads as rewritten:

"(j) Custody and Visitation Rights of Grandparents. – In any action in which the custody of a minor child has been determined, upon a motion in the cause and a showing of changed circumstances pursuant to G.S. 50-13.7, the grandparents of the child are entitled to such custody or visitation rights as the court, in its discretion, deems appropriate. ~~As used in this subsection, "grandparent" includes a biological grandparent of a child adopted by a stepparent or a relative of the child where a substantial relationship exists between the grandparent and the child.~~ Under no circumstances shall a biological grandparent of a child adopted by adoptive parents, neither of whom is related to the child and where parental rights of both biological parents have been terminated, be entitled to visitation rights."

SECTION 4. This act is effective when it becomes law and applies to actions for visitation rights commenced on or after that date.

HOUSE BILL 239:
Grandparents' Visitation Rights

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	March 23, 2011
Introduced by:	Reps. Brisson, Howard, Hurley	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 239 would expand the right of grandparents to seek visitation with their grandchildren as follows:***

- ***A biological grandparent would be able to institute an action for visitation rights with a child.***
- ***The court would be able to award visitation with the grandparent if it determines it is in the best interest of the child after considering a list of factors.***
- ***There would be a rebuttable presumption that visitation is not in the child's best interest if the biological parents agree that the grandparent should not be awarded visitation rights.***

CURRENT LAW: North Carolina law currently allows a grandparent to maintain an action for visitation of a minor child under limited circumstances. If the grandparent does not have standing under one of the following statutes, no action may be brought in court and no visitation order may be entered:

G.S. 50-13.2(b1) permits grandparents to intervene **in an ongoing custody dispute** and request visitation with the minor child. A grandparent may not initiate an action under this statute unless the question of custody is already before the court.

G.S. 50-13.5(j) permits a grandparent to petition for visitation, **where custody has previously been determined, upon a showing of changed circumstances**. The burden would be on the grandparent to show the court that there had been a change of circumstances since the original custody order was entered and that the requested visitation would now be in the child's best interest.

G.S. 50-13.2A permits a biological grandparent to petition for visitation **where the minor child has been adopted by a step-parent or relative of the child and a substantial relationship exists between the grandparent and the child**. Again, it is only under these specific circumstances that the grandparent would even have standing to bring an action before the court.

G.S. 50-13.1(a) permits "any parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child [to] institute an action or proceeding for the custody of such child," and custody is defined as custody or visitation or both. On its face, it may seem that the statute gives grandparents, along with many others, standing to seek visitation under any circumstances. However, the courts have not interpreted it that way. In McIntyre v. McIntyre, 341 NC 629, 633, 461 S.E.2d 745, 748-49 (1995), the NC Supreme Court held that grandparents do not have standing, under G.S. 50-13.1(a), to seek visitation with their grandchildren when there is no ongoing custody proceeding and the grandchild's family is intact. North Carolina Courts have consistently given North Carolina's nonparental visitation statutes a narrow reading. It should also be noted that NC courts have held that an "intact family" is not limited to situations where both natural parents are living with their children.

If a grandparent does have standing under any of these statutes, then he or she may petition the court for visitation. Once the case is before the court, the judge must look to the best interests of the child in making a determination, and the grandparent has the burden of proving to the judge that visitation is in the best interest of the child.

BILL ANALYSIS: House Bill 239 would amend the law to allow a biological grandparent to institute an action for visitation rights with a child. The court would be able to award visitation rights only if it determines that visitation is in the child's best interest after considering all of the following factors:

- Whether there is a preexisting relationship between the grandparent and child, or willingness of the grandparent to encourage a close relationship between parent and child.
- Willingness of the child to develop a relationship with the grandparent, if the child is mature enough to decide.
- The reasonableness of the parent in allowing, restricting, or denying visitation.
- Mental and physical health of the child.
- Mental and physical health of the grandparent.
- Whether visitation will substantially interfere with parental authority.
- Any other relevant factors.

There would be a rebuttable presumption that visitation is not in the child's best interest if the child's biological parents agree that the grandparent should not be awarded visitation.

EFFECTIVE DATE: The act would be effective when it becomes law, and would apply to actions for visitation commenced on or after that date.

BACKGROUND: The U.S. Supreme Court has long held that parents have a fundamental constitutional right to make decisions concerning the care, custody and control of their children, including decisions regarding with whom they may associate, and there is a presumption that fit parents act in the best interest of their children. In the 2000 case of *Troxel v. Granville*, 120 S.Ct. 2054, the U.S. Supreme Court affirmed a Washington State Supreme Court ruling that found the state's third-party visitation statute to be invalid. The Court found that Washington's statute was too broad and infringed on the parental right of autonomy in child rearing. Since this decision many state courts have reexamined their states' third-party visitation laws and are using the Supreme Court's ruling as a guideline. Courts and legislatures dealing with this issue have focused on providing a narrow standard for who has standing to petition for visitation and adhering to the Supreme Court's affirmation of a fit parent's constitutional right to determine what is best for his or her child.

H239-SMSU-10(e1) v2

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — March 23, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kathy Hartkopf	Hillsborough, NC Citizen Interest
AL HARTKOPF	HILLSBOROUGH, NC CITIZEN
Mary Bethune	AARP. NC
Fred Bone	Bone & Asso.
Patrick Betancourt	NC Dept. of Health & Human Svcs./DSS
Terri Reichert	NC Dept of Health & Human Svcs/DSS.
Colleen Kachmarek	NCCADV
Beth Froehlich	NCCADV
Gwendolyn Burrell	CCPS - Governor's Crime Commission
Tim Crouch	NC Bar Assn
David Holm	NC Bar Assn

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — March 23, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Penny Griffin	School of Gov
Jane Royall	NC Family Policy Council
Rev. Donna Creech	CAL
Stephanie North	DOA - YAIO
Miriam Preiss	Grandchildren / Grandparents Visitation (GCVNC)
Barbara Hammerle	Grandchildren / Grandparents Visitation of NC
Betty Oates	Grandchildren / Grandparents Visitation of NC
Janet Long	Grandchildren / Grandparents visitation of NC
Susie Lucas	Grandchildren " Visitation Rights
Vera McRee	Grand Children Visit.
Denis R Hamb	GRAND CHILDRN / GRAND PARENTS VISITATION GASTONIA NC

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — March 23, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeanette Leigh	GRANDPARENTS VISITATION

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, March 30, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, March 30, 2011, at 10:00 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, and Weiss.

Representative Tim Moore presided and called the meeting to order. Representative Moore recognized the Sergeant of Arms and the pages.

The following bills were considered:

HB 199, Req. DV Victim/List Prior Action Against Def. (Representative Rhyne, Jr., Primary Sponsor). Chair Moore recognized Representative Rhyne to speak on the bill. Representative Rhyne asked the bill to be temporarily displaced.

HB 382, Juvenile Code Revisions.-AB (Representatives Jordan, Glazier, Randleman, and Stevens, Primary Sponsors). Chair Moore recognized Representative Jordan. A proposed committee substitute was placed before the members, and a motion was accepted from Representative Insko to place the proposed committee substitute before the committee. Representative Jordan recognized to speak on the bill. Representative Jordan recognized three from the public. Wendy Graf Ray, Staff, was recognized to explain the bill. Chair Moore asked the three advocates of the bill to state who they are and who they represent: Angie Stephenson, Assistant Attorney General, NCDOJ, Deana Fleming, Associate Legal Counsel, AOC, and Wendy Sotolongo, Parent Representation Coordinator, Office of the Appellate Defender. Representative Jordan also explained the bill. Discussion followed by members of the committee and the advocates. Chair Moore recognized Representative Weiss to send forth an amendment (see attached). Chair Moore said the bill sponsor prefers a perfecting amendment. Chair Rhyne took the motion from Representative Weiss to adopt the amendment, and the amendment was adopted. Chair Rhyne recognized Rep. Jones for a motion of a favorable report to the Proposed Committee Substitute as amended and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 199, Req. DV Victim/List Prior Action Against Def. (Representative Rhyne, Jr., Primary Sponsor). Chair Moore recognized Representative Rhyne. Chair Moore accepted a motion from Rep. Jones to place the Proposed Committee Substitute before the committee. Representative Rhyne spoke on the bill. Representative Jones was recognized by Chair Moore for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 408, Amend Criminal Discovery Laws, (Representatives Moore, Spear and Shepard, Primary Sponsors). Chair Rhyne recognized Representative Moore to speak on the bill. Jan Paul, Staff, was recognized by Chair Moore to explain the bill. Discussion followed. Chair Rhyne recognized the public to speak on the bill: Jeff Hunt and Ben David. Other DA's were asked to stand up and give their names by Chair Rhyne. See attached. Chair Rhyne recognized Joe Cheshire, Cheshire Parker Law Firm, to speak on the bill. Next, Thomas Maher, IDS, was recognized by Chair Rhyne to speak on the bill, and also David Teddy, attorney. No vote was taken on the bill.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Representative Tim Moore

Nancy Garriss
Committee Assistant

Representative Johnathan Rhyne

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, March 30, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 199	Req. DV Victim/List Prior Action Against Def.	Representative Rhyne, Jr.
HB 382	Juvenile Code Revisions.-AB	Representative Jordan Representative Glazier Representative Randleman Representative Stevens
HB 408	Amend Criminal Discovery Laws.	Representative Moore Representative Spear Representative Shepard

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10 AM** o'clock on **March 29, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

AGENDA

House Judiciary Subcommittee C

Wednesday, March 30, 2011
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

HB 199	**Req. DV Victim/List Prior Action Against Def.**	**Representative Rhyne, Jr.**
HB 382	**Juvenile Code Revisions.-AB**	**Representative Jordan** **Representative Glazier** **Representative Randleman** **Representative Stevens**
HB 408	**Amend Criminal Discovery Laws.**	**Representative Moore** **Representative Spear** **Representative Shepard**

ADJOURNMENT

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 199 A BILL TO BE ENTITLED AN ACT REQUIRING ANY PERSON SEEKING RELIEF PURSUANT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER TO INCLUDE IN THE COMPLAINT OR MOTION FILED WHETHER THE PERSON HAS PREVIOUSLY FILED AN ACTION OR MOTION FOR DOMESTIC VIOLENCE AGAINST THE DEFENDANT AND IF SO, THE DISPOSITION OF THAT ACTION.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 382 A BILL TO BE ENTITLED AN ACT AMENDING THE JUVENILE CODE UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 199
PROPOSED COMMITTEE SUBSTITUTE H199-PCS50204-TJ-2

Short Title: Req. DV Victim/List Prior Action Against Def. (Public)

Sponsors:

Referred to:

March 2, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING ANY PERSON SEEKING RELIEF PURSUANT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER TO INCLUDE IN THE COMPLAINT OR MOTION FILED WHETHER THE PERSON HAS PREVIOUSLY FILED AN ACTION OR MOTION FOR DOMESTIC VIOLENCE AGAINST THE DEFENDANT AND, IF SO, THE DISPOSITION OF THAT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2(a) reads as rewritten:

"(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. The Administrative Office of the Courts shall develop a form on which the party seeking a protective order shall disclose (i) whether the party has previously filed any action or motion for domestic violence against the defendant and (ii) the disposition of the action, if applicable. The party seeking relief shall file and serve the form with the complaint or motion. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 2. This act becomes effective October 1, 2011.

HOUSE BILL 199:
Req. DV Victim/List Prior Action Against Def

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	March 30, 2011
Introduced by:	Rep. Rhyne	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition		

SUMMARY: House Bill 199 would require a person seeking a domestic violence protective order to provide information as to whether the person has previously initiated any domestic violence action or motion against the defendant, and the disposition of that action.

CURRENT LAW: G.S. 50B-2(a) sets out the procedure for obtaining a domestic violence protective order from a district court judge or magistrate, including requirements for notice and service of the action, and what must be attached to the summons.

BILL ANALYSIS: House Bill 199 would direct the Administrative Office of the Courts to develop a form on which a person seeking a domestic violence protective order must disclose (i) whether the plaintiff has previously filed an action or motion for domestic violence against the same defendant, and (ii) the disposition, if any, of that prior action or motion. The form must be filed and served with the complaint or motion.

EFFECTIVE DATE: The act becomes effective October 1, 2011.

H199-SMTJ-10(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 199

Short Title:	Req. DV Victim/List Prior Action Against Def.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 2, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING ANY PERSON SEEKING RELIEF PURSUANT TO A DOMESTIC VIOLENCE PROTECTIVE ORDER TO INCLUDE IN THE COMPLAINT OR MOTION FILED WHETHER THE PERSON HAS PREVIOUSLY FILED AN ACTION OR MOTION FOR DOMESTIC VIOLENCE AGAINST THE DEFENDANT AND IF SO, THE DISPOSITION OF THAT ACTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50B-2(a) reads as rewritten:

"(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Upon filing a civil action or motion under this Chapter, the person seeking relief shall include in the complaint or motion filed (i) whether the person has previously filed any action or motion for domestic violence against the defendant and (ii) the disposition of the action, if applicable. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5."

SECTION 2. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 382
PROPOSED COMMITTEE SUBSTITUTE H382-PCS90066-SU-9

Short Title: Juvenile Code Revisions.-AB (Public)

Sponsors:

Referred to:

March 17, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE JUVENILE CODE UNDER THE LAWS PERTAINING TO ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200(a) is amended by adding a new subdivision to read:

"(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

...

(4a) Proceedings for reinstatement of parental rights.

...."

SECTION 2. G.S. 7B-503(a) reads as rewritten:

"(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and any of the following apply:

(1) The juvenile has been ~~abandoned; or~~ abandoned.

(2) The juvenile has suffered physical injury or sexual ~~abuse; or~~ abuse.

(3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or ~~protection; or~~ protection.

(4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical ~~treatment; or~~ treatment.

(5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody ~~order; or~~ order.

(6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means

available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody."

SECTION 3. G.S. 7B-507 reads as rewritten:

"**§ 7B-507. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

...

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the ~~agency~~ department is to provide or arrange for the foster care or other placement of the ~~juvenile; and~~juvenile. After considering the department's recommendations, the court may order a specific placement the court finds to be in the juvenile's best interest; and

...

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

...

(c) ~~At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing. At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian, or custodian or that parent, guardian, or custodian's counsel may give notice to preserve the parent, guardian, or custodian's right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5). Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that person sought to offer in opposition to cessation of reunification that the court refused to admit as evidence or to consider.~~When the court determines that reunification efforts are not required or shall cease, the court shall order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the court's determination to cease reunification efforts is made in a hearing that was duly and timely noticed as a permanency planning hearing, then the court may immediately proceed to consider all of the criteria contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to achieve a safe, permanent home within a reasonable period of time. If the court's decision to cease reunification efforts arises in any other hearing, the court shall schedule a subsequent hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that party sought to offer in opposition to cessation of reunification that the court refused to admit.

...."

SECTION 4. G.S. 7B-600(b) reads as rewritten:

"(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the

juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the ~~juvenile,~~juvenile and the guardian is a party to the proceeding, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition under G.S. 7B-906 or G.S. 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person of the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

SECTION 5. G.S. 7B-801 is amended by adding a new subsection to read:

"(b1) Nothing in this Subchapter precludes the court in an abuse, neglect, or dependency proceeding from entering a consent adjudication order, disposition order, review order, or permanency planning order when each of the following apply:

(1) All parties are present or represented by counsel, who is present and authorized to consent.

(2) The juvenile is represented by counsel.

(3) The court makes sufficient findings of fact."

SECTION 6. G.S. 7B-807(a) reads as rewritten:

"(a) If the court finds from the evidence, including stipulations by a party, that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. Any stipulations by a party to specific adjudicatory facts shall be in writing and signed by that party. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker."

SECTION 7. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. Dispositional hearing.**

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing

paternity. The court shall also inquire about efforts made to identify and notify relatives as potential resources for placement or support."

SECTION 8. G.S. 7B-902 is repealed.

SECTION 9. G.S. 7B-905(a) reads as rewritten:

"(a) The dispositional order shall be in writing, signed, and entered no later than 30 days from the completion of the hearing, and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 10. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

...

(c) The court shall consider at least the following in its ~~review:~~review and make written findings regarding the following that are relevant:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such ~~plan;~~plan.

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption ~~agency; and~~agency.

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(4) Whether the current placement is in the juvenile's best interest.

(d) The court, after making findings of fact, shall do one of the following:

(1) ~~affirm~~ Affirm the county department's or child-placing agency's ~~plans or~~plans.

(2) If a juvenile is not placed with prospective adoptive parents, order a placement or different plan the court finds to be in the juvenile's best interest after considering the department's recommendations.

In either case, the court may require specific additional steps ~~which~~ that are necessary to accomplish a permanent placement ~~which~~ that is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

~~(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Within 10 days of receiving a copy of the adoption petition, the county~~

~~department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file.~~"

SECTION 11. G.S. 7B-1001 reads as rewritten:

"**§ 7B-1001. Right to appeal.**

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

...

(5) An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:

a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:

1. A motion or petition to terminate the parent's rights is heard and granted.

2. The order terminating parental rights is appealed in a proper and timely manner.

3. The order to cease reunification is ~~assigned as an error~~identified as an issue in the record on appeal of the termination of parental rights.

...

(b) ~~Except for orders covered in subdivision (a)(5) of this section, notice~~Notice of appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58. ~~Notice of appeal for orders covered in subdivision (a)(5) of this section shall be given in writing by a proper party as defined in G.S. 7B-1002.~~

...."

SECTION 12. G.S. 7B-1105(b) reads as rewritten:

"(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may ~~appoint a guardian ad litem for the unknown parent to~~order the petitioner to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106."

SECTION 13. G.S. 7B-1106(b)(5) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

...

(5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the ~~clerk~~ petitioner upon filing of the answer or 30 days from the date of service if no answer is filed; and".

SECTION 14. G.S. 7B-1108(a) reads as rewritten:

"(a) Any respondent may file a written answer to the petition or written response to the motion. Only a district court judge may grant an extension of time in which to answer or

respond. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney."

SECTION 15. G.S. 7B-1109(f) reads as rewritten:

"(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. The rules of evidence in civil cases shall apply. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights."

SECTION 16. G.S. 7B-1110(a) reads as rewritten:

"(a) After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. ~~In making this determination, the court shall consider the following:~~The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

(1) The age of the juvenile.
(2) The likelihood of adoption of the juvenile.
(3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
(4) The bond between the juvenile and the parent.
(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
(6) Any relevant consideration.

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 17. G.S. 7B-1112(1) reads as rewritten:

"**§ 7B-1112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the ~~juvenile~~ juvenile, except as otherwise provided in G.S. 7B-908(d), as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

...."

SECTION 18. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new sections to read:

"**§ 7B-1112.1. Selection of adoptive parents.**

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five business days. The county department of social services shall notify the guardian ad litem of the selection of prospective adoptive parents within 10 days of the selection and before the filing of the adoption petition. If the guardian ad litem disagrees with the selection of adoptive parents, the guardian ad litem shall file a motion within 10 days of the department's notification and schedule the case for hearing on the next juvenile calendar. The department shall not change the juvenile's placement to the prospective adoptive parents unless the time period for filing a motion has expired and no motion has been filed. In hearing the motion, the court shall consider the recommendations of the agency and the guardian ad litem and other facts related to the selection of adoptive parents. The court shall then determine whether the proposed adoptive placement is in the juvenile's best interests.

"**§ 7B-1114. Reinstatement of parental rights.**

(a) A juvenile whose parent's rights have been terminated pursuant to this Article, the guardian ad litem attorney, or a county department of social services with custody of the juvenile may file a motion to reinstate the parent's rights if all of the following conditions are satisfied:

(1) The juvenile is at least 12 years of age or, if the juvenile is younger than 12, the motion alleges extraordinary circumstances requiring consideration of the motion.

(2) The juvenile does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time.

(3) The order terminating parental rights was entered at least three years before the filing of the motion, unless the court has found or the juvenile's attorney advocate and the county department of social services with custody of the juvenile stipulate that the juvenile's permanent plan is no longer adoption.

(b) If a motion could be filed under subsection (a) of this section and the parent whose rights have been terminated contacts the county department of social services with custody of the juvenile or the juvenile's guardian ad litem regarding reinstatement of the parent's rights, the department or the guardian ad litem shall notify the juvenile that the juvenile has a right to file a motion for reinstatement of parental rights.

(c) If a motion to reinstate parental rights is filed and the juvenile does not have a guardian ad litem appointed pursuant to G.S. 7B-601, the court shall appoint a guardian ad litem to represent the best interests of the juvenile. The appointment, duties, and payment of the guardian ad litem and the guardian ad litem attorney shall be the same as in G.S. 7B-601 and G.S. 7B-603.

(d) The party filing a motion to reinstate parental rights shall serve the motion on each of the following who is not the movant:

(1) The juvenile.

(2) The juvenile's guardian ad litem or the guardian ad litem attorney.

(3) The county department of social services with custody of the juvenile.

(4) The former parent whose rights the motion seeks to have reinstated.

A former parent who is served under this subsection is not a party to the proceeding and is not entitled to appointed counsel but may retain counsel at the former parent's own expense.

(e) The movant shall ask the clerk to calendar the case for a preliminary hearing on the motion for reinstatement of parental rights within 60 days of the filing of the motion at a session of court scheduled for the hearing of juvenile matters. The movant shall give at least 15 days' notice of the hearing and state its purpose to the persons listed in subdivisions (d)(1) through (d)(4) of this section. In addition, the movant shall send a notice of the hearing to the juvenile's placement provider. Nothing in this section shall be construed to make the former parent or the juvenile's placement provider a party to the proceeding based solely on being served with the motion or receiving notice and the right to be heard.

(f) At least seven days before the preliminary hearing, the department of social services and the juvenile's guardian ad litem shall provide to the court, the other parties, and the former parent reports that address the factors specified in subsection (g) of this section.

(g) At the preliminary hearing and any subsequent hearing on the motion, the court shall consider information from the county department of social services with custody of the juvenile, the juvenile, the juvenile's guardian ad litem, the juvenile's former parent whose parental rights are the subject of the motion, the juvenile's placement provider, and any other person or agency that may aid the court in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and whether reinstatement is in the juvenile's best interest. The court shall consider the following criteria and make written findings regarding the following that are relevant:

(1) What efforts were made to achieve adoption or a permanent guardianship.

(2) Whether the parent whose rights the motion seeks to have reinstated has remedied the conditions that led to the juvenile's removal and termination of the parent's rights.

(3) Whether the juvenile would receive proper care and supervision in a safe home if placed with the parent.

(4) The age and maturity of the child and the ability of the child to express the child's preference.

(5) The parent's willingness to resume contact with the juvenile and to have parental rights reinstated.

(6) The juvenile's willingness to resume contact with the parent and to have parental rights reinstated.

(7) Services that would be needed by the juvenile and the parent if the parent's rights were reinstated.

(8) Any other criteria the court deems necessary.

(h) At the conclusion of the preliminary hearing, the court shall either dismiss the motion or order that the juvenile's permanent plan become reinstatement of parental rights. If the court does not dismiss the motion, the court shall conduct interim hearings at least every six months until the motion is granted or dismissed. Interim hearings may be combined with posttermination of parental rights review hearings required by G.S. 7B-908. At each interim hearing, the court shall assess whether the plan of reinstatement of parental rights continues to be in the juvenile's best interest and whether the department of social services has made reasonable efforts to achieve the permanent plan.

(i) At any hearing under this section, after making proper findings of fact and conclusions of law, the court may do one of the following:

(1) Enter an order for visitation in accordance with G.S. 7B-905(c).

(2) Order that the juvenile be placed in the former parent's home and supervised by the department of social services either directly or, when the former parent lives in a different county, through coordination with the county department of social services in that county, or by other personnel as may be available to the court, subject to conditions applicable to the former parent as

the court may specify. Any order authorizing placement with the former parent shall specify that the juvenile's placement and care remain the responsibility of the county department of social services with custody of the juvenile and that the department is to provide or arrange for the placement of the juvenile.

(j) The court shall either dismiss or grant a motion for reinstatement of parental rights within 12 months from the date the motion was filed, unless the court makes written findings why a final determination cannot be made within that time. If the court makes such findings, the court shall specify the time frame in which a final order shall be entered.

(k) An order reinstating parental rights restores all rights, powers, privileges, immunities, duties, and obligations of the parent as to the juvenile, including those relating to custody, control, and support of the juvenile. If a parent's rights are reinstated, the court shall be relieved of the duty to conduct periodic reviews.

(l) An order shall be entered no later than 30 days following the completion of any hearing pursuant to this section. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(m) The granting of a motion for reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights.

(n) A parent whose rights are reinstated pursuant to this section is not liable for child support or the costs of any services provided to the juvenile for the period from the date of the order terminating the parent's rights to the date of the order reinstating the parent's rights."

SECTION 19. This act becomes effective October 1, 2011, and applies to actions filed or pending on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 382 DATE 3-30-11

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Weiss
Sen.)

1 moves to amend the bill on page [redacted], line [redacted]
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 ~~page 1, line 13, through page 2, line 2~~
5 _____
6 by deleting Section 2, and renumbering
7 ~~the remaining sections~~
8 _____
9 page 1, lines 19-20, by rewriting the
10 line to read:
11 "(2) The juvenile has suffered physical
12 injury or sexual ~~abuse; or~~ abuse."
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 382:
Juvenile Code Revisions.-AB

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	March 30, 2011
Introduced by:	Reps. Jordan, Glazier, Randleman, Stevens	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition H382-CSSU-9		

SUMMARY: ***House Bill 382 amends the North Carolina Juvenile Code as it pertains to abuse, neglect, and dependency, as recommended by the Juvenile Code Revision Subcommittee of the North Carolina Court Improvement Project.***

BILL ANALYSIS: House Bill 382 would amend Chapter 7B (Juvenile Code) of the General Statutes as follows:

Section 1 specifies that the court has jurisdiction over proceedings for reinstatement of parental rights.

Section 2 provides that the suffering of serious emotional damage by a juvenile is grounds for nonsecure custody.

Section 3 provides that the court may order a placement after consideration of the department's recommendations if it is in the child's best interest.

Section 4 specifies that a court-appointed guardian becomes a party to the juvenile proceeding when a permanent plan of guardianship is implemented.

Section 5 creates a new section providing for the entering of consent orders at adjudication, disposition, review or permanency planning hearings when parties are present, the juvenile is represented by counsel, and the court makes sufficient findings of fact. ***Section 8*** of the bill repeals a similar stand alone section regarding consent orders.

Section 6 codifies the common practice of allowing the court to accept stipulations of fact for adjudication.

Section 7 requires the court to inquire about missing parents and paternity at the dispositional hearing.

Section 9 makes a conforming change to G.S. 7B-905(a) to provide for a subsequent hearing following a dispositional order if the order is not timely entered within the 30 day statutory time frame.

Section 10 requires the court to make specific findings of fact regarding certain considerations at post termination of parental rights review hearing, including whether the current placement is in the juvenile's best interest. This section also gives the court discretion about placement when a child has not been placed with prospective adoptive parents.

Section 11 amends statutes to conform to the Rules of Appellate Practice and for consistency of entering notice of appeal.

Section 12 allows the court to order the petitioner to make a diligent search for an unknown parent instead of the court appointing a guardian ad litem for an unknown parent to inquire about the parent's identity.

Section 13 specifies that it is the petitioner in a termination of parental rights proceeding, not the clerk, who sends out the notice of hearing.

Section 14 clarifies that only a district court judge, not a clerk, may give a respondent an extension of time to answer a termination of parental rights petition or motion.

Section 15 specifies that the rules of evidence apply to terminations of parental rights in accordance with case law.

Section 16 specifies that the rules of evidence are relaxed at the best interest determination of a termination of parental rights proceeding, allowing the court to consider any evidence, including hearsay evidence, that the court finds to be relevant, reliable, and necessary. The language is consistent with the rules for all dispositional juvenile hearings. This section also requires the court to make written findings of relevant criteria.

Section 17 conforms G.S. 7B-1112 to reflect changes made in Section 10.

Section 18 provides an avenue for the court to reinstate parental rights in certain situations: when a juvenile is over 12; the juvenile has not been adopted or the adoption has disrupted; and the order terminating parental rights was entered at least three years prior, unless there is a stipulation that adoption is no longer the juvenile's permanent plan. Only the juvenile, the guardian ad litem attorney, or the department of social services may file the motion. Biological parents would not have standing to file the motion since their rights have been terminated. This section provides for interim hearings, trial placements, and other measures to determine whether reinstatement is appropriate.

EFFECTIVE DATE: The bill is effective October 1, 2011, and applies to actions filed or pending on or after that date.

H382-SMSU-18(CSSU-9) v2

HOUSE BILL 382

Short Title:	Juvenile Code Revisions.-AB	(Public)
Sponsors:	Representatives Jordan, Glazier, Randleman, and Stevens (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 17, 2011

A BILL TO BE ENTITLED

AN ACT amending the juvenile code under the laws pertaining to abuse, neglect, and dependency.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200(a) is amended by adding a new subdivision to read:

"(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

...

(4a) Proceedings for reinstatement of parental rights.

...."

SECTION 2. G.S. 7B-503(a) reads as rewritten:

"(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

...

(2) The juvenile has suffered physical ~~injury or~~injury, sexual ~~abuse; or~~abuse, or serious emotional damage as defined by G.S. 7B-101(1)e. or

...

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody."

SECTION 3. G.S. 7B-507 reads as rewritten:

"**§ 7B-507. Reasonable efforts.**

(a) An order placing or continuing the placement of a juvenile in the custody or placement responsibility of a county department of social services, whether an order for continued nonsecure custody, a dispositional order, or a review order:

...

(4) Shall specify that the juvenile's placement and care are the responsibility of the county department of social services and that the ~~agency~~ department is to provide or arrange for the foster care or other placement of the ~~juvenile; and~~juvenile. After considering the department's recommendations, the court

may order a specific placement the court finds to be in the juvenile's best interest; and

...

A finding that reasonable efforts have not been made by a county department of social services shall not preclude the entry of an order authorizing the juvenile's placement when the court finds that placement is necessary for the protection of the juvenile. Where efforts to prevent the need for the juvenile's placement were precluded by an immediate threat of harm to the juvenile, the court may find that the placement of the juvenile in the absence of such efforts was reasonable.

...

(c) ~~At any hearing at which the court finds that reasonable efforts to eliminate the need for the juvenile's placement are not required or shall cease, the court shall direct that a permanency planning hearing as required by G.S. 7B-907 be held within 30 calendar days after the date of the hearing and, if practicable, shall set the date and time for the permanency planning hearing. At any hearing at which the court finds and orders that reasonable efforts to reunify a family shall cease, the affected parent, guardian, or custodian or that parent, guardian, or custodian's counsel may give notice to preserve the parent, guardian, or custodian's right to appeal the finding and order in accordance with G.S. 7B-1001(a)(5). Notice may be given in open court or in writing within 10 days of the hearing at which the court orders the efforts to reunify the family to cease. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that person sought to offer in opposition to cessation of reunification that the court refused to admit as evidence or to consider.~~When the court determines that reunification efforts are not required or shall cease, the court shall order a plan for permanence as soon as possible, after providing each party with a reasonable opportunity to prepare and present evidence. If the court's determination to cease reunification efforts is made in a hearing that was duly and timely noticed as a permanency planning hearing, then the court may immediately proceed to consider all of the criteria contained in G.S. 7B-907(b), make findings of fact, and set forth the best plan of care to achieve a safe, permanent home within a reasonable period of time. If the court's decision to cease reunification efforts arises in any other hearing, the court shall schedule a subsequent hearing within 30 days to address the permanent plan in accordance with G.S. 7B-907. At any hearing at which the court orders that reunification efforts shall cease, the affected parent, guardian, or custodian may give notice to preserve the right to appeal that order in accordance with G.S. 7B-1001. The party giving notice shall be permitted to make a detailed offer of proof as to any evidence that party sought to offer in opposition to cessation of reunification that the court refused to admit.

...."

SECTION 4. G.S. 7B-600(b) reads as rewritten:

"(b) In any case where the court has determined that the appointment of a relative or other suitable person as guardian of the person for a juvenile is in the best interest of the juvenile and has also made findings in accordance with G.S. 7B-907 that guardianship is the permanent plan for the ~~juvenile,~~juvenile and the guardian is a party to the proceeding, the court may not terminate the guardianship or order that the juvenile be reintegrated into a parent's home unless the court finds that the relationship between the guardian and the juvenile is no longer in the juvenile's best interest, that the guardian is unfit, that the guardian has neglected a guardian's duties, or that the guardian is unwilling or unable to continue assuming a guardian's duties. If a party files a motion or petition under G.S. 7B-906 or G.S. 7B-1000, the court may, prior to conducting a review hearing, do one or more of the following:

(1) Order the county department of social services to conduct an investigation and file a written report of the investigation regarding the performance of the guardian of the person of the juvenile and give testimony concerning its investigation.

(2) Utilize the community resources in behavioral sciences and other professions in the investigation and study of the guardian.

(3) Ensure that a guardian ad litem has been appointed for the juvenile in accordance with G.S. 7B-601 and has been notified of the pending motion or petition.

(4) Take any other action necessary in order to make a determination in a particular case."

SECTION 5. G.S. 7B-801 is amended by adding a new subsection to read:

"(b1) Nothing in this Subchapter precludes the court in an abuse, neglect, or dependency proceeding from entering a consent adjudication order, disposition order, review order, or permanency planning order when each of the following apply:

(1) All parties are present or represented by counsel, who is present and authorized to consent.

(2) The juvenile is represented by counsel.

(3) The court makes sufficient findings of fact."

SECTION 6. G.S. 7B-807(a) reads as rewritten:

"(a) If the court finds from the evidence, including stipulations by a party, that the allegations in the petition have been proven by clear and convincing evidence, the court shall so state. Any stipulations by a party to specific adjudicatory facts shall be in writing and signed by that party. If the court finds that the allegations have not been proven, the court shall dismiss the petition with prejudice, and if the juvenile is in nonsecure custody, the juvenile shall be released to the parent, guardian, custodian, or caretaker."

SECTION 7. G.S. 7B-901 reads as rewritten:

"**§ 7B-901. Dispositional hearing.**

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted.

At the dispositional hearing, the court shall inquire as to the identity and location of any missing parent and whether paternity is at issue. The court shall include findings of the efforts undertaken to locate the missing parent and to serve that parent and efforts undertaken to establish paternity when paternity is an issue. The order may provide for specific efforts in determining the identity and location of any missing parent and specific efforts in establishing paternity. The court shall also inquire about efforts made to identify and notify relatives as potential resources for placement or support."

SECTION 8. G.S. 7B-902 is repealed.

SECTION 9. G.S. 7B-905(a) reads as rewritten:

"(a) The dispositional order shall be in writing, signed, and entered no later than 30 days from the completion of the hearing, and shall contain appropriate findings of fact and conclusions of law. The court shall state with particularity, both orally and in the written order of disposition, the precise terms of the disposition including the kind, duration, and the person who is responsible for carrying out the disposition and the person or agency in whom custody is vested. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and

explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 10. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

...

(c) The court shall consider at least the following in its ~~review:~~review and make written findings regarding the following that are relevant:

(1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such ~~plan;~~plan.

(2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption ~~agency; and~~agency.

(3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(4) Whether the current placement is in the juvenile's best interest.

(d) The court, after making findings of fact, shall do one of the following:

(1) ~~affirm~~ Affirm the county department's or child-placing agency's ~~plans or~~plans.

(2) If a juvenile is not placed with prospective adoptive parents, order a placement or different plan the court finds to be in the juvenile's best interest after considering the department's recommendations.

In either case, the court may require specific additional steps ~~which~~ that are necessary to accomplish a permanent placement ~~which~~ that is in the best interests of the juvenile.

(e) If the juvenile is the subject of a decree of adoption prior to the date scheduled for the review, within 10 days of receiving notice that the adoption decree has been entered, the department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice of the entry. The adoption decree shall not be filed in the court file. The review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified.

~~(f) The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five days. Within 10 days of receiving a copy of the adoption petition, the county department of social services shall file with the court and serve on any guardian ad litem for the juvenile written notice that the adoption petition has been filed. The adoption petition shall not be filed in the court file. The guardian ad litem has 10 days from service of the written notice that the adoption petition has been filed to file a motion alleging any abuse of discretion by the county department of social services or child placing agency in the adoption selection process. The motion shall be filed in the adoption proceeding and result in the transfer of the adoption proceeding to the district court pursuant to G.S. 48-2-601(a1). The guardian ad litem shall file with the court and serve the department of social services written notice that the motion was filed. The motion shall not be filed in the court file."~~

SECTION 11. G.S. 7B-1001 reads as rewritten:

"§ 7B-1001. Right to appeal.

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of Appeals. Only the following juvenile matters may be appealed:

...

(5) An order entered under G.S. 7B-507(c) with rights to appeal properly preserved as provided in that subsection, as follows:

a. The Court of Appeals shall review the order to cease reunification together with an appeal of the termination of parental rights order if all of the following apply:

1. A motion or petition to terminate the parent's rights is heard and granted.

2. The order terminating parental rights is appealed in a proper and timely manner.

3. The order to cease reunification is ~~assigned as an error~~identified as an issue in the record on appeal of the termination of parental rights.

...

(b) ~~Except for orders covered in subdivision (a)(5) of this section, notice~~Notice of appeal shall be given in writing by a proper party as defined in G.S. 7B-1002 and shall be made within 30 days after entry and service of the order in accordance with G.S. 1A-1, Rule 58. ~~Notice of appeal for orders covered in subdivision (a)(5) of this section shall be given in writing by a proper party as defined in G.S. 7B-1002.~~

...."

SECTION 12. G.S. 7B-1105(b) reads as rewritten:

"(b) The court may, in its discretion, inquire of any known parent of the juvenile concerning the identity of the unknown parent and may ~~appoint a guardian ad litem for the unknown parent to~~order the petitioner to conduct a diligent search for the parent. Should the court ascertain the name or identity of the parent, it shall enter a finding to that effect; and the parent shall be summoned to appear in accordance with G.S. 7B-1106."

SECTION 13. G.S. 7B-1106(b)(5) reads as rewritten:

"(b) The summons shall be issued for the purpose of terminating parental rights pursuant to the provisions of subsection (a) of this section and shall include:

...

(5) Notice that the date, time, and place of any pretrial hearing pursuant to G.S. 7B-1108.1 and the hearing on the petition will be mailed by the ~~clerk~~ petitioner upon filing of the answer or 30 days from the date of service if no answer is filed; and

...."

SECTION 14. G.S. 7B-1108(a) reads as rewritten:

"(a) Any respondent may file a written answer to the petition or written response to the motion. Only a district court judge may grant an extension of time in which to answer or respond. The answer or response shall admit or deny the allegations of the petition or motion and shall set forth the name and address of the answering respondent or the respondent's attorney."

SECTION 15. G.S. 7B-1109(f) reads as rewritten:

"(f) The burden in such proceedings shall be upon the petitioner or movant and all findings of fact shall be based on clear, cogent, and convincing evidence. The rules of evidence in civil cases shall apply. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights."

SECTION 16. G.S. 7B-1110(a) reads as rewritten:

"(a) After an adjudication that one or more grounds for terminating a parent's rights exist, the court shall determine whether terminating the parent's rights is in the juvenile's best interest. ~~In making this determination, the court shall consider the following:~~The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the best interests of the juvenile. In each case, the court shall consider the following criteria and make written findings regarding the following that are relevant:

(1) The age of the juvenile.
(2) The likelihood of adoption of the juvenile.
(3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.
(4) The bond between the juvenile and the parent.
(5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
(6) Any relevant consideration.

Any order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the termination of parental rights hearing. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection."

SECTION 17. G.S. 7B-1112(1) reads as rewritten:

"**§ 7B-112. Effects of termination order.**

An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued. The parent is not thereafter entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise participate therein:

(1) If the juvenile had been placed in the custody of or released for adoption by one parent to a county department of social services or licensed child-placing agency and is in the custody of the agency at the time of the filing of the petition or motion, including a petition or motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating parental rights, acquire all of the rights for placement of the ~~juvenile~~ juvenile, except as otherwise provided in G.S. 7B-908(d), as the agency would have acquired had the parent whose rights are terminated released the juvenile to that agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes, including the right to consent to the adoption of the juvenile.

...."

SECTION 18. Article 11 of Chapter 7B of the General Statutes is amended by adding the following new sections to read:

"**§ 7B-1112.1. Selection of adoptive parents.**

The process of selection of specific adoptive parents shall be the responsibility of and within the discretion of the county department of social services or licensed child-placing agency. The guardian ad litem may request information from and consult with the county department or child-placing agency concerning the selection process. If the guardian ad litem requests information about the selection process, the county shall provide the information within five business days. The county department of social services shall notify the guardian ad

litem of the selection of prospective adoptive parents within 10 days of the selection and before the filing of the adoption petition. If the guardian ad litem disagrees with the selection of adoptive parents, the guardian ad litem shall file a motion within 10 days of the department's notification and schedule the case for hearing on the next juvenile calendar. The department shall not change the juvenile's placement to the prospective adoptive parents unless the time period for filing a motion has expired and no motion has been filed. In hearing the motion, the court shall consider the recommendations of the agency and the guardian ad litem and other facts related to the selection of adoptive parents. The court shall then determine whether the proposed adoptive placement is in the juvenile's best interests.

"**§ 7B-1114. Reinstatement of parental rights.**

(a) A juvenile whose parent's rights have been terminated pursuant to this Article, the guardian ad litem attorney, or a county department of social services with custody of the juvenile may file a motion to reinstate the parent's rights if all of the following conditions are satisfied:

(1) The juvenile is at least 12 years of age or, if the juvenile is younger than 12, the motion alleges extraordinary circumstances requiring consideration of the motion.

(2) The juvenile does not have a legal parent, is not in an adoptive placement, and is not likely to be adopted within a reasonable period of time.

(3) The order terminating parental rights was entered at least three years before the filing of the motion, unless the court has found or the juvenile's attorney advocate and the county department of social services with custody of the juvenile stipulate that the juvenile's permanent plan is no longer adoption.

(b) If a motion could be filed under subsection (a) of this section and the parent whose rights have been terminated contacts the county department of social services with custody of the juvenile or the juvenile's guardian ad litem regarding reinstatement of the parent's rights, the department or the guardian ad litem shall notify the juvenile that the juvenile has a right to file a motion for reinstatement of parental rights.

(c) If a motion to reinstate parental rights is filed and the juvenile does not have a guardian ad litem appointed pursuant to G.S. 7B-601, the court shall appoint a guardian ad litem to represent the best interests of the juvenile. The appointment, duties, and payment of the guardian ad litem and the guardian ad litem attorney shall be the same as in G.S. 7B-601 and G.S. 7B-603.

(d) The party filing a motion to reinstate parental rights shall serve the motion on each of the following who is not the movant:

(1) The juvenile.

(2) The juvenile's guardian ad litem or the guardian ad litem attorney.

(3) The county department of social services with custody of the juvenile.

(4) The former parent whose rights the motion seeks to have reinstated.

A former parent who is served under this subsection is not a party to the proceeding and is not entitled to appointed counsel, but may retain counsel at the former parent's own expense.

(e) The movant shall ask the clerk to calendar the case for a preliminary hearing on the motion for reinstatement of parental rights within 60 days of the filing of the motion at a session of court scheduled for the hearing of juvenile matters. The movant shall give at least 15 days' notice of the hearing and state its purpose to the persons listed in subdivisions (d)(1) through (d)(4) of this section. In addition, the movant shall send a notice of the hearing to the juvenile's placement provider. Nothing in this section shall be construed to make the former parent or the juvenile's placement provider a party to the proceeding based solely on being served with the motion or receiving notice and the right to be heard.

(f) At least seven days before the preliminary hearing, the department of social services and the juvenile's guardian ad litem shall provide to the court, the other parties, and the former parent reports that address the factors specified in subsection (g) of this section.

(g) At the preliminary hearing and any subsequent hearing on the motion, the court shall consider information from the county department of social services with custody of the juvenile, the juvenile, the juvenile's guardian ad litem, the juvenile's former parent whose parental rights are the subject of the motion, the juvenile's placement provider, and any other person or agency that may aid the court in its review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and whether reinstatement is in the juvenile's best interest. The court shall consider the following criteria and make written findings regarding the following that are relevant:

(1) What efforts were made to achieve adoption or a permanent guardianship.

(2) Whether the parent whose rights the motion seeks to have reinstated has remedied the conditions that led to the juvenile's removal and termination of the parent's rights.

(3) Whether the juvenile would receive proper care and supervision in a safe home if placed with the parent.

(4) The age and maturity of the child, and the ability of the child to express the child's preference.

(5) The parent's willingness to resume contact with the juvenile and to have parental rights reinstated.

(6) The juvenile's willingness to resume contact with the parent and to have parental rights reinstated.

(7) Services that would be needed by the juvenile and the parent if the parent's rights were reinstated.

(8) Any other criteria the court deems necessary.

(h) At the conclusion of the preliminary hearing, the court shall either dismiss the motion or order that the juvenile's permanent plan become reinstatement of parental rights. If the court does not dismiss the motion, the court shall conduct interim hearings at least every six months until the motion is granted or dismissed. Interim hearings may be combined with post-termination of parental rights review hearings required by G.S. 7B-908. At each interim hearing the court shall assess whether the plan of reinstatement of parental rights continues to be in the juvenile's best interest and whether the department of social services has made reasonable efforts to achieve the permanent plan.

(i) At any hearing under this section, after making proper findings of fact and conclusions of law, the court may do one of the following:

(1) Enter an order for visitation in accordance with G.S. 7B-905.1(b).

(2) Order that the juvenile be placed in the former parent's home and supervised by the department of social services either directly or, when the former parent lives in a different county, though coordination with the county department of social services in that county, or by other personnel as may be available to the court, subject to conditions applicable to the former parent as the court may specify. Any order authorizing placement with the former parent shall specify that the juvenile's placement and care remain the responsibility of the county department of social services with custody of the juvenile and that the department is to provide or arrange for the placement of the juvenile.

(j) The court shall either dismiss or grant a motion for reinstatement of parental rights within 12 months from the date the motion was filed, unless the court makes written findings

why a final determination cannot be made within that time. If the court makes such findings, the court shall specify the time frame in which a final order shall be entered.

(k) An order reinstating parental rights restores all rights, powers, privileges, immunities, duties, and obligations of the parent as to the juvenile, including those relating to custody, control, and support of the juvenile. If a parent's rights are reinstated, the court shall be relieved of the duty to conduct periodic reviews.

(l) An order shall be entered no later than 30 days following the completion of any hearing pursuant to this section. If the order is not entered within 30 days following completion of the hearing, the clerk of court for juvenile matters shall schedule a subsequent hearing at the first session of court scheduled for the hearing of juvenile matters following the 30-day period to determine and explain the reason for the delay and to obtain any needed clarification as to the contents of the order. The order shall be entered within 10 days of the subsequent hearing required by this subsection.

(m) The granting of a motion for reinstatement of parental rights does not vacate or otherwise affect the validity of the original order terminating parental rights.

(n) A parent whose rights are reinstated pursuant to this section is not liable for child support or the costs of any services provided to the juvenile for the period from the date of the order terminating the parent's rights to the date of the order reinstating the parent's rights."

SECTION 19. This act becomes effective October 1, 2011, and applies to actions filed or pending on or after that date.

HOUSE BILL 408:
Amend Criminal Discovery Laws

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	March 29, 2011
Introduced by:	Reps. T. Moore, Spear, Shepard	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 408 would amend the Criminal Procedure Act relating to discovery in Superior Court.***

BILL ANALYSIS:

Section 1. Currently, G.S. 15A-903(a)(1) defines "prosecutorial agency" and requires the State to make available to the defendant the complete files of all law enforcement or prosecutorial agencies involved in the investigation or prosecution of the offenses. Section 1 of the bill would amend G.S. 15A-903(a)(1) to delete the definition of "prosecutorial agency" and provide that, upon motion of the defendant, the court must order the prosecutor to make available to the defendant the prosecutor's complete file related to the investigation of the offenses or prosecution of the defendant. It would modify requirements regarding oral statements made by a witness to a prosecutor when a law enforcement officer is not present to provide that such statements need not be written or recorded unless the information in the statement is *material* and significantly new or different from one that the witness made previously. The section would add a requirement to G.S. 15A-903(a)(2) that the court must order a representative of the State who requests investigative assistance or expert witness services, to file and serve on the defendant, in open court in the presence of the defendant's attorney, a hearing notice and motion requesting such assistance or services. Subsection 15A-903(c) would add a requirement that a law enforcement agency must provide a complete copy of its files related to the investigation of prosecution of the case to the State at the State's request.

Section 2 would define a CrimeStoppers organization, and add a provision that, unless ordered to do so by the court, the State is not required to divulge the identity of any person who has given information to CrimeStoppers under assurance of anonymity, nor is the State required to disclose the Victim Impact Statement as defined in G.S. 15A-904(a3). The bill would add a provision that the district attorney or prosecuting attorney and legal staff are presumed to be acting in good faith if the State has complied with the provisions of the law relating to discovery in Superior Court.

Section 3 would add a requirement to G.S. 15A-905(c)(2) that, upon motion of the State, a court must order a defendant requesting investigative assistance or expert witness services to file and serve on the State, in open court in the presence of the prosecuting attorney, a hearing notice and motion for such assistance or services.

Section 4 adds a new subsection providing that a court must make specific findings to support the imposition of sanctions on any party for failing to comply with discovery procedures.

EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to cases pending or filed on or after that date.

H408-SMTJ-8(e1) v3

HOUSE BILL 408

Short Title:	Amend Criminal Discovery Laws.	(Public)
Sponsors:	Representatives T. Moore, Spear, and Shepard (Primary Sponsors).. For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the prosecutor's complete ~~files of all law enforcement and prosecutorial agencies involved in the~~ file involving the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. ~~The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant.~~ Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is material and significantly new or different information in the oral statement from a prior statement made by the witness. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court. Any representative of the State requesting investigatory assistance or expert witness services must file a

motion and notice of hearing on the defendant. All such requests must be made in court and in the presence of opposing counsel.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) Upon request by the State, a law enforcement ~~or prosecutorial~~ agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a)."

SECTION 2. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

(a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(a2) The State is not required to provide any personal identifying information of a witness beyond that witness's name, address, date of birth, and published phone number, unless the court determines upon motion of the defendant that such additional information is necessary to accurately identify and locate the witness.

(a3) The State is not required to disclose the identity of any individual providing information about a crime or criminal conduct to a Crime Stoppers organization under promise or assurance of anonymity unless ordered by the court. For purposes of this Article, a Crime Stoppers organization or similarly named entity means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expands donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance between the news media, the community, and law enforcement officials.

(a4) The State is not required to disclose the Victim Impact Statement or its contents unless otherwise required by law. For purposes of this Chapter, a Victim Impact Statement is a document submitted by the victim or the victim's family to the State pursuant to the Victims' Rights Amendment.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements.

(d) If the State has undertaken to comply with this Article by making disclosure, the district attorney or other prosecuting attorney and the legal staff are presumed to be acting in good faith for the purposes of determinations made by the court or agency of the State."

SECTION 3. G.S. 15A-905(c)(2) reads as rewritten:

"(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

...

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court. Any defendant requesting investigatory assistance or expert witness services must file a motion and notice of hearing on the State. All such requests must be made in court and in the presence of opposing counsel.

...."

SECTION 4. G.S. 15A-910 is amended by adding a new subsection to read:

"(c) If the court imposes any sanction, it must make specific findings justifying the imposed sanction."

SECTION 5. This act becomes effective December 1, 2011, and applies to cases pending on that date and to cases filed on or after that date.

NCAJ PROPOSED AMENDMENTS TO H408
Regarding The Definition of "File" For Purposes of Open File Discovery and the Potential Sanctioning of Lawyers for Discovery Violations

§ 15A-501. Police processing and duties upon arrest generally.

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

(1) Must inform the person arrested of the charge against him or the cause for his arrest.

(2) Must, with respect to any person arrested without a warrant and, for purpose of setting bail, with respect to any person arrested upon a warrant or order for arrest, take the person arrested before a judicial official without unnecessary delay.

(3) May, prior to taking the person before a judicial official, take the person arrested to some other place if the person so requests.

(4) May, prior to taking the person before a judicial official, take the person arrested to some other place if such action is reasonably necessary for the purpose of having that person identified.

(5) Must without unnecessary delay advise the person arrested of his right to communicate with counsel and friends and must allow him reasonable time and reasonable opportunity to do so.

(6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty. Any person who willfully omits or misrepresents evidence or information required to be disclosed by this subsection or G.S. 15A-901(a)(1), or required to be provided to the State pursuant to G.S. 15A-901(c), shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information otherwise required to be disclosed pursuant to this subsection or any other provision of G.S. 15A-901 shall be guilty of a Class 1 misdemeanor.

§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to

the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) ~~Upon request by the State, a~~ A law enforcement or prosecutorial agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a).

§ 15A-910. Regulation of discovery – Failure to comply.

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or
(2) Grant a continuance or recess, or
(3) Prohibit the party from introducing evidence not disclosed, or
(3a) Declare a mistrial, or
(3b) Dismiss the charge, with or without prejudice, or
(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article. For the sole purpose of considering whether to impose professional discipline for failure to comply with this Article, the court shall presume that a lawyer has acted in good faith to comply with this Article if the court finds that the lawyer made a reasonably diligent effort, after engaging in a reasonably diligent inquiry, to provide the material required to be disclosed by this Article.

FORENSIC SCIENCE ACT AMENDMENTS TO DISCOVERY (H27)

§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the crimes committed or the prosecution of the defendant.

a. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have

been committed by the defendant. When any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.

b. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant.

c. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness.

d. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) Upon request by the State, a law enforcement or prosecutorial agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a). All public and private entities that obtain such information shall ensure that all material listed in subdivision (1) of subsection (a) of this section is fully disclosed to the referring prosecutorial agency for disclosure to the defendant.

(d) Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be provided to the State pursuant to subsection (c) of this section, shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1 misdemeanor."

Advocates for Justice

The Prosecutor's Constitutional Duty To Discover & Produce Brady Material
A Sample of Case Law

"[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

"[N]o one doubts that police investigators sometimes fail to inform a prosecutor of all they know. But neither is there any serious doubt that 'procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it.' Since, then, the prosecutor has the means to discharge the government's *Brady* responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials." *Kyles v. Whitley*, 514 U.S. 419. 438 (1995)(quoting *Giglio v. United States*, 405 U.S. 150 (1972)).

"Nor is the effect of the nondisclosure neutralized because the prosecuting attorney was not shown to have had knowledge of the exculpatory evidence. ... The duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney. ... We cannot condone the attempt to connect the defendant with the crime by ... inferences which might be refuted by undisclosed and unproduced documents then in the hands of the police. To borrow a phrase ..., this procedure passes 'beyond the line of tolerable imperfection and falls into the field of fundamental unfairness.'" *Barbee v. Warden*, 331 F.2d 842, 846 (4th Cir. Md. 1964)(quoting *Curran v. Deleware*, 259 F.2d 707, 713 (3d Cir. 1958)).

"[W]hether the nondisclosure was a result of negligence or design, it is the responsibility of the prosecutor. The prosecutor's office is an entity and as such it is the spokesman for the Government. A promise made by one attorney must be attributed, for these purposes, to the Government. To the extent this places a burden on the large prosecution offices, procedures and regulations can be established to carry that burden and to insure communication of all relevant information on each case to every lawyer who deals with it." *Giglio v. United States*, 405 U.S. 150, 154 (U.S. 1972).

"[T]he prosecutor is the party who is ultimately accountable for the nondisclosure of evidence [and] the 'prosecution' for *Brady* purposes encompasses not only the individual prosecutor handling the case, but also extends to the prosecutor's entire office, as well as law enforcement personnel and other arms of the state involved in investigative aspects of a particular criminal venture." *Smith v. Secretary of N.M. Dep't of Corrections*, 50 F.3d 801, 824 (10th Cir. N.M. 1995).

"Of course the prosecutor's own interest in avoiding surprise at trial gives him a very considerable incentive to search accessible files for possibly exculpatory evidence, quite independent of *Brady*. ... [T]he courts' willingness to insist on an affirmative duty of inquiry may stem primarily from a sense that an inaccurate conviction based on government failure to turn over an easily turned rock is essentially as offensive as one based on government non-disclosure." *United States v. Brooks*, 966 F.2d 1500, 1502-3 (D.C. Cir. 1992).

"The duty to produce requested evidence falls on the state; there is no suggestion in *Brady* that different 'arms' of the government are severable entities.... 'The duty to disclose is that of the state, which ordinarily acts through the prosecuting attorney.'" *Martinez v. Wainwright*, 621 F.2d 184, 186-87 (5th Cir. 1980)(quoting *Barbee v. Warden, Maryland Penitentiary*, 331 F.2d 842, 846 (4th Cir. 1964)).

"There is no question that the [lawyer] prosecuting a case is responsible for compliance with the dictates of *Brady* and its progeny. This personal responsibility cannot be evaded by claiming lack of control over the files or procedures of other executive branch agencies." *United States v. Jennings*, 960 F.2d 1488, 1491 (9th Cir. Cal. 1992)(citations omitted).

"[A] prosecutor's office cannot get around *Brady* by keeping itself in ignorance, or compartmentalizing information about different aspects of a case." *Carey v. Duckworth*, 738 F.2d 875, 878 (7th Cir. Ind. 1984).

"If disclosure were excused in instances where the prosecution has not sought out information readily available to it, we would be inviting and placing a premium on conduct unworthy of representatives of the United States Government. This we decline to do." *United States v. Auten*, 632 F.2d 478, 481 (5th Cir. Tex. 1980). "[N]on-disclosure is inexcusable where the prosecution has not sought out information readily available to it." *United States v. Perdomo*, 929 F.2d 967, 971 (3d Cir. V.I. 1991)(citing *United States v. Auten*, 632 F.2d 478 (5th Cir. 1980)).

"[T]he more specifically the defense requests certain evidence, thus putting the prosecutor on notice of its value, the more reasonable it is for the defense to assume from the nondisclosure that the evidence does not exist, and to make pretrial and trial decisions on the basis of this assumption." *United States v. Bagley*, 473 U.S. 667, 682-83 (1985).

"Where ... there is an explicit request for an apparently very easy examination, and a non-trivial prospect that the examination might yield material exculpatory information, we think the prosecution should make the inquiry." *United States v. Brooks*, 966 F.2d 1500, 1504 (D.C. Cir. 1992).

"Here, as in most circumstances, *Brady* compliance demanded no more than simple advertence. The evidence was readily accessible to the prosecution. A cursory review of the crime lab's file would have revealed the existence of the [undisclosed evidence]. ... [T]he prosecutor acknowledged that he would have promptly divulged the information had he been aware of it. Regardless of the reason, he failed to do so." *In re Brown*, 17 Cal. 4th 873, 884 (Cal. 1998).

"The individual prosecutor is presumed to have knowledge of all information gathered in connection with the government's investigation." *United States v. Payne*, 63 F.3d 1200, 1208 (2d Cir. N.Y. 1995).

"Knowledge by police or investigators is ... imputed to the prosecution under *Brady*." *United States v. Buchanan*, 891 F.2d 1436, 1443 (10th Cir. Okla. 1989).

"The prosecutor's ignorance of the existence of [evidence generated by a police officer] does not justify the State's failure to produce it, since *Brady* provides that the good faith or bad faith of the prosecution is irrelevant to the due process inquiry. This may be especially true when the withheld evidence is under the control of a state instrumentality closely aligned with the prosecution, such as the police." *United States ex rel. Smith v. Fairman*, 769 F.2d 386, 391 (7th Cir. Ill. 1985).

"The prosecutor contends that because he was not in possession of the rap sheet and was unaware of its existence, he cannot be held responsible for suppressing evidence under *Brady*. This argument is unpersuasive in view of his assurance to counsel and to the court that he had exhausted all avenues of inquiry and that no rap sheet or record of conviction existed. ... That the prosecutor was personally unaware of the existence of the rap sheet does not excuse his misrepresentation to the trial court that a rap sheet was unavailable. While the prosecutor's actions can be characterized as only negligent '[t]he deception which results from negligent nondisclosure is no less damaging than that deception which is a product of guile.'" *Martinez v. Wainwright*, 621 F.2d 184, 187-88 (5th Cir. Fla. 1980)(quoting *Shuler v. Wainwright*, 341 F. Supp. 1061, 1069 (M.D.Fla.1972)).

NCAJ

NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT FOR LAWYERS
Regarding Discovery Obligations

Rule 3.4 (d)(2)-(3): Fairness to Opposing Party and Counsel

"A lawyer shall not ..., in pretrial procedure, ... fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party, or ... fail to disclose evidence or information that the lawyer knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions."

> "**Comment 5**: Paragraph (d) makes it clear that a lawyer must be reasonably diligent in making inquiry of the client, or third party, about information or documents responsive to discovery requests or disclosure requirements arising from statutory law, rules of procedure, or caselaw. 'Reasonably' is defined in Rule 0.1, *Terminology*, as meaning 'conduct of a reasonably prudent and competent lawyer.' Rule 0.1(i). When responding to a discovery request or disclosure requirement, a lawyer must act in good faith. The lawyer should impress upon the client the importance of making a thorough search of the client's records and responding honestly. If the lawyer has reason to believe that a client has not been forthcoming, the lawyer may not rely solely upon the client's assertion that the response is truthful or complete."

Rule 3.8(d): Special Responsibilities of a Prosecutor

"The prosecutor in a criminal case shall ...[,] after reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions including all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal."

> "**Comment 4**: Every prosecutor should be aware of the discovery requirements established by statutory law and case law. *See, e.g.*, N.C. Gen. Stat. §15A-903 et. seq, *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. U.S.*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995). The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest."

Committee Sergeants at Arms

NAME OF COMMITTEE Judiciary C

DATE: 3-30-2011 **Room:** 415

House Sgt-At Arms:

1. **Name:** Garland Shepheard
2. **Name:** Champ Claris
3. **Name:** Reggie Sills
4. **Name:**
5. **Name:**

Senate Sgt-At Arms:

1. **Name:**
2. **Name:**
3. **Name:**
4. **Name:**
5. **Name:**

HOUSE PAGES

NAME OF COMMITTEE Jud C DATE _____

1. Name: Lauren Kent
   County: Forsyth
   Sponsor: Folwell
2. Name: Alli Howell
   County: Cleveland
   Sponsor: Moore T.
3. Name: Whitney Helms
   County: Cleveland
   Sponsor: Moore T.
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

SGT-AT-ARM

1. Name: _____
2. Name: _____
3. Name: _____
4. Name: _____

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — March 30, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Parks	AOJ
Sarah Preston	ACLU-NC
Anna Chamberlain	
Tanah Callahan	NCCM
Laurie Graham	UNC-SSW
Michela Farnsworth	UNC-SSW
Meghan Kerr	UNC-SSW
Robin Roche	UNC-SSW
Deirdre Curran	Habitat for Humanity
DAVID TEDDY	NCAJ
Kimberly N Overton	Conference of District Attorneys

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — March 30, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TARA FIELDS	Benchmarks
Robert Evans	NC Conference of DA's
Peg Dorer	Conf of DAs
Jeff Hunt	DA - 29-B
Ben David	DA-5
Tom Horner	DA-23
Seth Edwards	DA-2
Beth Froehling	NCCADV
Thomas Maher	IDS

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — March 30, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie Stephenson	NC DOJ, on behalf of DHHS / DSS
Terri Reichert	NCDSS
Patrick Betancourt	NCDHHS / NCDSS
Forest Gillian	Governor's Office
Mike Hinson	Cheshire, Parker, Law Firm
Joe CHESHIRE	CHESHIRE PARKER LAW FIRM
BRAD BANNON	CHESHIRE PARKER LAW FIRM

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — March 30, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Danielle Carman	IDS
Chris Mumme	NC Center on Actl. Innocence
Dick Taylor	~~NCAJ~~
Burton Craige	NCAJ
Susan Doyle	DA - 11B
Jim Woodall	DA - 15B
Garry Frank	DA - 22B
Darryl Hunt	NAACP
Jon David	DA - 13

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, April 13, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, April 13, 2011, at 10:05 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Moore presided and called the meeting to order. Rep. Moore recognized the pages.

The following bills were considered:

HB 616, Amend Engineers and Surveyors Laws (Representative Gillespie, Primary Sponsor). Chair Moore recognized Rep. Gillespie to speak on the bill. Chair Rhyne recognized Rep. Jordan for a motion of a favorable report on the bill. With the majority in favor, the motion carried.

SB 406, Repeal Crossbow Purchase Permit Requirement (Senators Brock, East, and Newton, Primary Sponsors). Chair Rhyne recognized Senator Brock to explain the bill. Chair Rhyne recognized Chair Moore who made a motion for a favorable report on the bill. With the majority in favor, the motion carried.

HB 30, Allow Wage Garnishment to Satisfy Judgments (Representative Tim Moore, Primary Sponsor). Chair Rhyne recognized Rep. Cleveland for a motion to place the Proposed Committee Substitute before the committee. Motion was accepted. Chair Rhyne recognized Rep. Moore to speak on the bill. Wendy Graf Ray, Staff, was recognized to also explain the bill. Discussion. Bill displaced temporarily.

HB 637, Adoption Law Changes (Representatives Jordan and Stevens, Primary Sponsors). Chair Rhyne recognized Rep. Jordan to explain the bill. Brinton Wright, an attorney in Greensboro, was recognized to speak on the bill. Discussion followed. Chair Rhyne displaced the bill until next week.

H30, Allow Wage Garnishment to Satisfy Judgments (Representative Tim Moore, Primary Sponsor). Chair Rhyne took a motion from Rep. Moore to adopt an amendment, and the amendment was adopted. Chair Rhyne accepted a motion from Rep. Jones for a favorable report to the Proposed Committee Substitute as amended and unfavorable to the original bill. With the majority being in favor, the motion carried.

H802, Child Support Order Stayed By Appeal (Representative Rhyne, Jr., Primary Sponsor). Chair Moore recognized Rep. Rhyne to speak on the bill. Chair Moore accepted a motion from Rep. Weiss for a motion for a favorable report. With the majority in favor, the motion carried.

HB 706, Alimony/Postseparation Support Changes, and HB 803, Allow Court to Assess Atty Fees/50C Orders were postponed from being heard until the next meeting.

Adjourned at 11:00 a.m.

Respectfully submitted,

Representative Johnathan Rhyne

Nancy Garriss
Committee Assistant

Representative Tim Moore

AGENDA

House Judiciary Subcommittee C

Wednesday, April 13, 2011
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Johnathan Rhyne, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 30	Allow Wage Garnishment to Satisfy Judgments.	Representative Moore
HB 616	Amend Engineers and Surveyors Laws.	Representative Gillespie
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 802	Child Support Order Stayed By Appeal.	Representative Rhyne, Jr.
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
SB 406	Repeal Crossbow Purchase Permit Requirement.	Senator Brock Senator East Senator Newton

ADJOURNMENT

Corrected Notice Added Bill

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 13, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: SB 406 is added

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 30	Allow Wage Garnishment to Satisfy Judgments.	Representative Moore
HB 616	Amend Engineers and Surveyors Laws.	Representative Gillespie
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 802	Child Support Order Stayed By Appeal.	Representative Rhyne, Jr.
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
SB 406	Repeal Crossbow Purchase Permit Requirement.	Senator Brock Senator East Senator Newton

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **April 12, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 13, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: REMOVED HB 846

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 30	Allow Wage Garnishment to Satisfy Judgments.	Representative Moore
HB 616	Amend Engineers and Surveyors Laws.	Representative Gillespie
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 802	Child Support Order Stayed By Appeal.	Representative Rhyne, Jr.
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1 PM** o'clock on **April 12, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

CORRECTED NOTICE – Bills Added

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 13, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: H706, H802, H803, H846 added, and H650 removed

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 30	Allow Wage Garnishment to Satisfy Judgments.	Representative Moore
HB 616	Amend Engineers and Surveyors Laws.	Representative Gillespie
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 802	Child Support Order Stayed By Appeal.	Representative Rhyne, Jr.
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
HB 846	Expand Access/Death Certificate/Adult Adoptee.	Representative LaRoque

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **12 PM** o'clock on **April 12, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 13, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 30	Allow Wage Garnishment to Satisfy Judgments.	Representative Moore
HB 616	Amend Engineers and Surveyors Laws.	Representative Gillespie
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings

Respectfully,
Representative Tim Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **April 07, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 30 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 616 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS RELATING TO THE REGULATION OF ENGINEERING AND LAND SURVEYING.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 802 A BILL TO BE ENTITLED AN ACT CLARIFYING THE LAWS PERTAINING TO THE STAYING OF ORDERS ON APPEAL AS RELATED TO CHILD CUSTODY, CHILD SUPPORT, AND ALIMONY.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
SB 406 A BILL TO BE ENTITLED AN ACT TO REPEAL THE REQUIREMENT THAT A PERSON OBTAIN A PERMIT TO RECEIVE, SELL, PURCHASE, OR OTHERWISE TRANSFER A CROSSBOW.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 30 DATE _____

S. B. No. _____ Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE A

Rep.) [redacted] Moore
)
Sen.)

1 moves to amend the bill on page 1, lines 28-29
2 ( ) WHICH CHANGES THE TITLE
3 by _____
4 "at any time after attempting execution of
5 a judgment for unfair or deceptive acts
6 or practices that has been returned
7 wholly or partially unsatisfied after
8 exhausting remedies available under
9 Article 31 of Chapter 1 of the General
10 Statutes, provided the following
11 conditions have been met:"
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 30
PROPOSED COMMITTEE SUBSTITUTE H30-PCS70178-SUf-11

Short Title: Allow Wage Garnishment to Satisfy Judgments. (Public)

Sponsors:

Referred to:

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 75 of the General Statutes is amended by adding a new section to read:

"**§ 75-16.3. Procedure for garnishment.**

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

(1) Judgment creditor. – A person awarded a judgment in which a determination has been made that a judgment debtor is found to have violated G.S. 75-1.1.

(2) Judgment debtor. – A person against whom a judgment has been rendered in which a determination has been made that the judgment debtor is found to have violated G.S. 75-1.1.

(3) Earnings. – Compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(4) Disposable earnings. – The part of the earnings which remains after the deduction of any amounts required by law to be withheld or withheld to pay for reasonably necessary expenses of the judgment debtor or the judgment debtor's dependents, including health care and day care expenses.

(5) Garnishee. – The person, firm, association, or corporation owing compensation for personal services, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) Judgments May Be Enforced by Garnishment of Wages. – Any judgment creditor awarded a judgment in which a determination has been made that a judgment debtor is found to have violated G.S. 75-1.1 and that the acts or practices which constituted the violation were knowingly and willfully committed may move the court in the county wherein the judgment debtor resides for an order for garnishment of the disposable earnings of the judgment debtor at any time after attempting execution of a judgment for unfair or deceptive acts or practices that has been returned wholly or partially unsatisfied after exhausting remedies available under Article 31 of Chapter 1 of the General Statutes, provided the following conditions have been met:

(1) The judgment creditor has sent a certified letter to the judgment debtor's last known address which includes information that the judgment debtor's disposable earnings may be subject to wage garnishment.

(2) The judgment debtor has neglected or refused to pay or make reasonable arrangements to pay the judgment within 10 days of the mailing of the letter described in subdivision (1) of this subsection.

(c) Motion and Notice Procedures. – The motion shall be in writing and describe in detail the grounds for requesting garnishment, the amount of judgment alleged to be unpaid, and the source of earnings of the judgment debtor. A notice of hearing must be served on the judgment debtor at least 10 days before the hearing, in a form to be prescribed by the Administrative Office of the Courts, that notifies the judgment debtor of the following:

(1) That if the judgment debtor fails to appear at the hearing, the court will enter an order directing the judgment debtor's employer to withhold a portion of wages to apply to the judgment.

(2) That the amount withheld may be as much as fifteen percent (15%) of the judgment debtor's disposable earnings.

(3) That an order of garnishment shall not be rendered if the judgment debtor is making regular payments to the judgment creditor that are equal to ten percent (10%) of the judgment debtor's monthly disposable earnings.

(4) That an order of garnishment shall not be rendered if the judgment debtor can show at the hearing that economic hardship would result to the judgment debtor or judgment debtor's dependents if garnishment is ordered.

(d) Filing Fee. – The motion shall be accompanied by a fee of twenty dollars ($20.00) payable to the clerk of court for the administrative costs of complying with the provisions of this section, which fee may be recoverable by the judgment creditor as a taxable cost of the action.

(e) Hearing. – The court may enter an order of garnishment following notice requirements set forth in this Article and a hearing held before a superior or district court judge pursuant to the motion for garnishment. At the hearing on the motion, the court shall determine whether an order of garnishment is appropriate on the basis of the motion, any affidavit of the judgment creditor, the record in the civil action, and any testimony and other relevant evidence offered by either party. The court shall not enter an order of garnishment if the judgment debtor is making regular payments to the judgment creditor that are equal to ten percent (10%) of the judgment debtor's monthly disposable earnings, or if economic hardship would result to the judgment debtor or judgment debtor's dependents if garnishment is ordered.

(f) Amount Subject to Garnishment. – The court shall not enter an order of garnishment which exceeds the lesser of fifteen percent (15%) of the judgment debtor's monthly disposable earnings, or the amount by which the disposable earnings for that pay period exceed an amount calculated by multiplying the federal minimum hourly wage by 50 times the number of weeks in the pay period. For purposes of applying this provision, a bimonthly pay period shall constitute 2.17 weeks and a monthly pay period shall constitute 4.33 weeks.

(g) Order of Garnishment; Contents. – If an order for garnishment is entered, the order shall state (i) the names and last known addresses of the judgment creditor and judgment debtor, (ii) the court in which and the date on which the money judgment was rendered, (iii) the original amount of the money judgment and the amount due thereon, (iv) the portion of the judgment debtor's earnings which are subject to garnishment thereunder, or the information necessary to determine such portion, and (v) any information which the judgment creditor provides to identify the judgment debtor's employer. The garnishment order shall notify any garnishee of the manner prescribed by this section for complying with the order. A copy of the order shall be served on the judgment debtor and the garnishee either personally or by certified or registered mail, return receipt requested. The garnishment order shall be subject to review for modification or dissolution upon the filing of a motion in the cause.

(h) Payment to the Court; Garnishee May Retain Fee. – Upon receipt of an order of garnishment, the garnishee shall transmit the amount ordered by the court to be garnished to the

clerk of court who shall disburse it to the judgment creditor. The garnishee shall not be required to change normal pay cycles but shall make every effort to ensure that payments are received as soon as practicable. The garnishment order shall simplify the withholding process for garnishees to the extent possible. The amount garnished shall be increased by an additional five dollar ($5.00) processing fee to be assessed and retained by the garnishee for each payment under the order.

(i) Duration of Garnishment Order. – A garnishment order issued pursuant to this section shall continue until whichever of the following events occurs first:

(1) The underlying judgment has been satisfied in full.

(2) The judgment debtor ceases to be employed by the employer, unless the judgment debtor is thereafter reinstated or reemployed within 90 days from the date employment was terminated.

(3) The limitations period prescribed by G.S. 1-47 has expired.

(j) Priority of Garnishment Orders. – Garnishment orders shall be satisfied by the employer according to the following order of priority, from highest to lowest:

(1) Garnishment pursuant to some authority other than this Article, by a governmental entity, by a public hospital, for child support, or by some other entity or for some other purpose. Nothing in this Article alters the priority in which such garnishments are to be satisfied.

(2) Garnishment pursuant to this Article. If an employer is served with more than one garnishment order obtained pursuant to this Article against the same judgment debtor, the garnishments shall be satisfied in the order in which they were served on the employer. Each prior garnishment order shall be satisfied before any effect is given to a subsequent garnishment order.

(k) Application of Payments Received. – All payments received by a judgment creditor shall be credited or applied in the following mandatory order of priority:

(1) Against the record costs of the judgment and garnishment orders.

(2) Against the accrued interest on the unpaid balance of the judgment, including postjudgment interest.

(3) Against the principal amount of the judgment.

(4) Against any attorneys' fees and costs awarded.

(l) Notice of Satisfaction. – The judgment creditor shall, within five business days following the satisfaction of the judgment, deliver to the garnishee a written notification that the garnishment order is satisfied. The judgment creditor shall, within 30 days after satisfaction of the judgment, notify the clerk in writing that the judgment is satisfied.

(m) Improper Garnishment. – In the event of an improper garnishment, the court may set aside the garnishment order and make such further orders as are necessary to return to the judgment debtor any funds improperly garnished, together with damages and reasonable costs and attorneys' fees."

SECTION 2. This act becomes effective October 1, 2011, and applies to civil actions filed on or after that date.

HOUSE BILL 30

Short Title:	Allow Wage Garnishment to Satisfy Judgments.	(Public)
Sponsors:	Representative T. Moore (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

February 3, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GARNISHMENT OF WAGES AS AN ADDITIONAL MEANS OF SATISFYING JUDGMENTS IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except that the~~ judgment. The earnings of the debtor for ~~his~~ the debtor's personal ~~services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.~~services that are less than or equal to 30 times the federal minimum hourly wage per work week or seventy-five percent (75%) of the debtor's net income, whichever is greater, shall not be subject to attachment or garnishment."

SECTION 2. Chapter 1C of the General Statutes is amended by adding a new Article to read:

"Article 15.

"Garnishment of Wages to Enforce Judgments.

"**§ 1C-1501. Definitions.**

The following definitions apply in this Article:

(1) Disposable earnings. – That part of the compensation paid or payable for personal services, including wages, salary, commission, bonus, payments to a pension or retirement program, and other similar payments that remain after the deduction of any amounts required by law to be withheld.

(2) Nonexempt earnings. – That portion of the disposable earnings owed to a judgment debtor that are not exempt under G.S. 1-362.

"**§ 1C-1502. Judgments may be enforced by garnishment of wages.**

(a) Final Judgments May Be Enforced by Garnishment. – Except as provided in G.S. 1C-1511, a final judgment awarding monetary damages against an individual may be enforced by a garnishment order directing the employer of the judgment debtor to pay nonexempt earnings to the judgment creditor.

(b) Public Compensation No Exception. – Earnings paid by a city, county, State, or local government authority are subject to the provisions of this Article in the same manner as earnings paid by any other employer.

"**§ 1C-1503. Issuance of garnishment order; service.**

(a) Clerk to Issue Order. – At any time after 30 days following the entry of a final judgment, upon the request of the judgment creditor, the clerk of superior court in the county in which the judgment was originally entered shall issue a garnishment order directing the employer of the judgment debtor to pay nonexempt earnings to the judgment creditor.

(b) Notice Required. – The garnishment order shall bear a notice that the judgment debtor has the right to file an objection to the garnishment order pursuant to G.S. 1C-1504.

(c) Service of Order. – A garnishment order issued pursuant to subsection (a) of this section shall be served by the judgment creditor on the judgment debtor and the employer of the judgment debtor, by certified mail, return receipt requested, or served by any means authorized under Rule 4 of the Rules of Civil Procedure.

"**§ 1C-1504. Objection by judgment debtor; hearing on objection.**

At any time following the issuance of a garnishment order under G.S. 1C-1503, the judgment debtor may file with the court and serve upon the employer and the judgment creditor a notice of objection to the garnishment order. Within 10 days after a notice of objection is filed, the clerk shall notify, by first-class mail, the judgment creditor and the judgment debtor of a hearing to be held before the clerk to determine the validity of the judgment debtor's objections. The hearing shall be held no later than 30 days following the filing of the notice of objection. Following the hearing, the clerk may make such orders as are necessary to modify or vacate the garnishment order. Appeal from the order by the clerk may be made to a judge of the court in the division from which the original judgment was issued.

"**§ 1C-1505. Payment to the judgment creditor; employer may retain fee.**

(a) Withholding and Remittance to Creditor. – If a garnishment order is issued pursuant to this Article, the employer of the judgment debtor shall withhold the nonexempt earnings of the judgment debtor and shall remit the amount withheld to the judgment creditor or the attorney of the judgment creditor as provided in the garnishment order within 15 days following the last wage pay period of each month, beginning with the pay period following the pay period in which the order is served upon the employer.

(b) Retention of Fee. – The employer may deduct from the amount garnished a fee not to exceed five dollars ($5.00) per pay period. The judgment creditor shall apply toward satisfaction of the judgment all amounts deducted by the employer pursuant to the garnishment order, including the fee retained by the employer.

"**§ 1C-1506. Duration of garnishment order.**

A garnishment order issued pursuant to G.S. 1C-1503 shall continue until whichever of the following events occurs first:

(1) The underlying judgment has been satisfied in full.

(2) The judgment debtor ceases to be employed by the employer, unless the judgment debtor is thereafter reinstated or reemployed within 90 days from the date employment was terminated.

"**§ 1C-1507. Priority of garnishment orders.**

Garnishment orders shall be satisfied by the employer according to the following order of priority, from highest to lowest:

(1) Garnishment pursuant to some authority other than this Article, by a governmental entity, by a public hospital, for child support, or by some other entity or for some other purpose. Nothing in this Article alters the priority in which such garnishments are to be satisfied.

(2) Garnishment pursuant to this Article. If an employer is served with more than one garnishment order obtained pursuant to this Article against the

same judgment debtor, the garnishments shall be satisfied in the order in which they were served on the employer.

"**§ 1C-1508. Application of payments received.**

All payments received by a judgment creditor shall be credited in the following order:

(1) Against the record costs of the judgment and garnishment orders.

(2) Against the accrued interest on the unpaid balance of the judgment, including postjudgment interest.

(3) Against the principal amount of the judgment.

(4) Against any attorneys' fees and costs awarded.

"**§ 1C-1509. Notice of satisfaction.**

The judgment creditor shall, within five business days following the satisfaction of the judgment, deliver to the employer a written notification that the garnishment order is satisfied. The judgment creditor shall, within 30 days after satisfaction of the judgment, notify the clerk in writing that the judgment is satisfied.

"**§ 1C-1510. Improper garnishment.**

In the event of an improper garnishment, the clerk may set aside the garnishment order and make such further orders as are necessary to return to the judgment debtor any funds improperly garnished, together with reasonable costs and attorneys' fees.

"**§ 1C-1511. Garnishment not available to enforce deficiency judgments.**

The clerk shall not issue an order of garnishment pursuant to this Article to enforce any deficiency judgment described in Article 2 of Chapter 45 of the General Statutes."

SECTION 3. G.S. 95-241(a) reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens to do any of the following:

(1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:

a. Chapter 97 of the General Statutes.

b. Article 2A or Article 16 of this Chapter.

c. Article 2A of Chapter 74 of the General Statutes.

d. G.S. 95-28.1.

e. Article 16 of Chapter 127A of the General Statutes.

f. G.S. 95-28.1A.

g. Article 52 of Chapter 143 of the General Statutes.

h. Article 5F of Chapter 90 of the General Statutes.

(2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.

(3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter, by Article 2A of Chapter 74 of the General Statutes, or by Article 52 of Chapter 143 of the General Statutes.

(4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes.

(5) Exercise rights under Chapter 50B. Actions brought under this subdivision shall be in accordance with the provisions of G.S. 50B-5.5.

(6) Has his or her wages garnished by legal process."

SECTION 4. This act becomes effective October 1, 2011, and applies to civil actions filed on or after that date.

HOUSE BILL 616

Short Title:	Amend Engineers and Surveyors Laws.	(Public)
Sponsors:	Representative Gillespie (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 5, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS RELATING TO THE REGULATION OF ENGINEERING AND LAND SURVEYING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89C-3 reads as rewritten:

"**§ 89C-3. Definitions.**

The following definitions apply in this Chapter:

...

(8a) Professional engineer, retired. – A person who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board after review of record, including any disciplinary action, to be granted the use of the honorific title "Professional Engineer, Retired".

...

(9a) Professional land surveyor, retired. – A person who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board after review of record, including any disciplinary action, to be granted the use of the honorific title "Professional Land Surveyor, Retired".

...."

SECTION 2. G.S. 89C-11 reads as rewritten:

"**§ 89C-11. Secretary; duties and liabilities; expenditures.**

The secretary of the Board shall receive and account for all moneys derived from the operation of the Board as provided in this Chapter, and shall deposit them in one or more special funds in banks or other financial institutions carrying deposit insurance and authorized to do business in North Carolina. The fund or funds shall be designated as "Fund of the Board of Examiners for Engineers and Surveyors" and shall be drawn against only for the purpose of implementing provisions of this Chapter as herein provided. All expenses certified by the Board as properly and necessarily incurred in the discharge of its duties, including authorized compensation, shall be paid out of this fund on the warrant signed by the secretary of the Board. At no time shall the total of warrants issued exceed the total amount of funds accumulated under this Chapter. The secretary of the Board shall give a surety bond satisfactory to the State Board of Examiners for Engineers and Surveyors, conditioned upon the faithful performance of the duties assigned. The premium on the bond is a proper and necessary expense of the Board. The secretary of the Board may delegate to the executive director certain

routine duties, such as receipt and disbursement of funds in stated amounts by a written authorization, which has the ~~unanimous~~ majority approval of the Board."

SECTION 3. G.S. 89C-12 read as rewritten:

"**§ 89C-12. Records and reports of Board; evidence.**

The Board shall keep a record of its proceedings and a register of all applicants for licensure, showing for each the date of application, name, age, education, and other qualifications, place of business and place of residence, whether the applicant was rejected or a certificate of licensure granted, and the date licensure was rejected or granted. The books and register of the Board shall be prima facie evidence of all matters recorded by the Board, and a copy duly certified by the secretary of the Board under seal shall be admissible in evidence as if the original were produced. A roster showing the names and places of business and of residence of all licensed professional engineers and all licensed professional land surveyors shall be prepared by the secretary of the Board current to the month of January of each year. ~~The roster shall be printed by the Board out of the Board's fund and distributed as described in the Board's rules.~~ On or before the first day of May of each year, the Board shall submit to the Governor a report on its transactions for the preceding year, and shall file with the Secretary of State a copy of the report, together with a complete statement of the receipts and expenditures of the Board attested by the chair and the secretary and a copy of the roster of licensed professional engineers and professional land surveyors."

SECTION 4. G.S. 89C-13 reads as rewritten:

"**§ 89C-13. General requirements for licensure.**

(a) Engineer Applicant. – To be eligible for licensure as a professional engineer, an applicant must be of good character and reputation. An applicant desiring to take the examination in the fundamentals of engineering must submit three character references, one of whom shall be a professional engineer. An applicant desiring to take the examination in the principles and practice of engineering must submit five references, two of whom shall be professional engineers having personal knowledge of the applicant's engineering experiences.

The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for licensure:

(1) As a professional engineer (shall meet one):

a. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of engineering, on the basis of comparable qualifications, issued to the person by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of ~~Canada, who completes an application for licensure and submits five references, two of which shall be from professional engineers having personal knowledge of the applicant's engineering experience, and who, in the opinion of the Board, meets the requirements of this Chapter, based on verified evidence may, upon application, be licensed without further examination.~~any foreign country possessing credentials that, based on verifiable evidence, in the opinion of the Board, of a standard not lower than that in effect in this State at the time the certificate was issued, may upon application, be licensed without further examination, except as required to examine the applicant's knowledge of laws, rules, and requirements unique to North Carolina.

~~A person holding a certificate of qualification issued by the Committee on National Engineering Certification of the National Council of Examiners for Engineering and Surveying whose~~

~~qualifications meet the requirements of this Chapter, may upon application, be licensed without further examination.~~

b. E.I. Certificate, Experience, and Examination. – A holder of a certificate of engineering intern issued by the Board, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to the principles and practice of engineering examination. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

c. Graduation, Experience, and Examination. – A graduate of an engineering curriculum of four years or more approved by the Board as being of satisfactory standing, ~~and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering,~~shall be admitted to the fundamentals of engineering examination, and with a specific record of an additional four years or more of progressive experience on engineering projects of a grade and character that indicates to the Board that the applicant may be competent to practice engineering, the principles and practice of engineering examination. Upon passing the examinations, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

d. Graduation, Experience, and Examination. – A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing or with an equivalent education and engineering experience satisfactory to the Board ~~and with a specific record of eight years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent in the fundamentals of engineering,~~ shall be admitted to the fundamentals of engineering examination and with a specific record of an additional eight years or more of progressive experience on engineering projects of a grade and character that indicates to the Board that the applicant may be competent to practice engineering, the principles and practice of engineering examination. Upon passing the examinations, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

e. Long-Established Practice. – A person with a specific record of 20 years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering shall be admitted to the principles and practice of engineering examination. Upon passing the examination, the applicant shall be granted a certificate of licensure to practice professional engineering in this State, provided the applicant is otherwise qualified.

At its discretion the Board may require an applicant to submit exhibits, drawings, designs, or other tangible evidence of engineering work which the applicant personally accomplished or supervised.

The following shall be considered as minimum evidence that the applicant is qualified for certification:

(2) As an engineering intern (shall meet one):

a. Graduation and Examination. – A graduate of an engineering curriculum or related science curriculum of four years or more, approved by the Board as being of satisfactory standing, or a student who ~~has attained senior status in an accredited engineering program,~~is graduating within two semesters, or the equivalent, of the semester in which the fundamentals of engineering examination is administered, shall be admitted to the fundamentals of engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed he shall be certified as an engineering intern if the applicant is otherwise qualified.

b. Graduation, Experience, and Examination. – A graduate of an engineering or related science curriculum of four years or more, other than the ones approved by the Board as being of satisfactory standing, or with equivalent education and engineering experience satisfactory to the Board and with a specific record of four or more years of progressive experience on engineering projects of a grade and character satisfactory to the Board, shall be admitted to the fundamentals of engineering examination. The applicant shall be notified if the examination was passed or not passed and if passed, the applicant shall be certified as an engineering intern if the applicant is otherwise qualified.

(b) Land Surveyor Applicant. – To be eligible for admission to examination for land surveyor intern or professional land surveyor, an applicant must be of good character and reputation and shall submit five references with the application for licensure as a land surveyor, two of which references shall be professional land surveyors having personal knowledge of the applicant's land surveying experience, or in the case of an application for certification as a land surveyor intern by three references, one of which shall be a licensed land surveyor having personal knowledge of the applicant's land surveying experience.

The evaluation of a land surveyor applicant's qualifications shall involve a consideration of the applicant's education, technical and land surveying experience, exhibits of land surveying projects with which the applicant has been associated, and recommendations by references. The land surveyor applicant's qualifications may be reviewed at an interview if the Board determines it necessary. Educational credit for institute courses, correspondence courses, or other courses shall be determined by the Board.

The following shall be considered a minimum evidence satisfactory to the Board that the applicant is qualified for licensure as a professional land surveyor or for certification as a land surveyor intern respectively:

(1) As a professional land surveyor (shall meet one):

a. Rightful possession of a bachelor of science degree in surveying or other equivalent curricula, all approved by the Board and a record satisfactory to the Board of two years or more of progressive practical experience, one year of which shall have been under a practicing professional land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully

passed the first examination on or before January 1, 2013, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. Upon passing the first examination and successful completion of the experience required by this subdivision, the applicant may apply to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

b. Rightful possession of an associate degree in surveying technology approved by the Board and a record satisfactory to the Board of four years of progressive practical experience, three years of which shall have been under a practicing licensed land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, eight years of progressive practical experience, four years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any written and oral examination required by the Board, all of which shall determine and indicate that the applicant is competent to practice land surveying. If the applicant has not successfully completed the first examination on or before January 1, 2013, the applicant may apply to the Board to take the first examination after obtaining the associate degree and completing four years of practical experience, two years of which shall have been under a practicing professional land surveyor at the first regularly scheduled examination thereafter. Upon passing the first examination and successfully completing the practical experience required under this subdivision, the applicant may apply to the Board to take the second examination (Principles and Practice of Land Surveying). An applicant who passes both examinations and successfully completes the educational and experience requirements of this subdivision shall be granted licensure as a professional land surveyor.

c. Repealed by Session Laws 1998-118, s. 11.

d. Graduation from a high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of seven years of progressive practical experience, six years of which shall have been under a practicing licensed land surveyor if the applicant has successfully passed the first examination (Fundamentals of Surveying) on or before January 1, 2013, or if the applicant has not successfully passed the first examination on or before January 1, 2013, 16 years of progressive practical experience, nine years of which shall have been under a practicing professional land surveyor, and satisfactorily passing any oral and written examinations required by the Board, all of which shall determine and indicate that the candidate is competent to practice land surveying. If the applicant has not successfully passed the first examination on or before January 1, 2013, the applicant may be qualified by the Board to take the first examination upon graduation from high school or the

completion of a high school equivalency certificate and successfully completing 10 years of progressive practice experience, six of which shall have been under a practicing licensed land surveyor.

e. Repealed by Session Laws 1985 (Regular Session, 1986), c. 977, s. 7.

f. Licensure by Comity or Endorsement. – A person holding a certificate of licensure to engage in the practice of land surveying issued on comparable qualifications from a state, territory, or possession of the United ~~States will be given comity considerations. However, the applicant may be asked~~States or the District of Columbia, possessing credentials that, based on verifiable evidence, in the opinion of the Board, of a standard not lower than that in effect in this State at the time the certificate was issued, may upon application, be licensed without further examination, except to take any examinations as the Board requires to determine the applicant's qualifications, but in any event, the applicant shall be required to pass an examination which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in North Carolina.

g. A licensed professional engineer who can satisfactorily demonstrate to the Board that the professional engineer's formal academic training in acquiring a degree and field experience in engineering includes land surveying, to the extent necessary to reasonably qualify the applicant in the practice of land surveying, may apply for and may be granted permission to take the principles and practice of land surveying examination and the fundamentals of land surveying examination. Upon satisfactorily passing the examinations, the applicant shall be granted a license to practice land surveying in the State of North Carolina.

h. Professional Engineers in Land Surveying. – Any person presently licensed to practice professional engineering under this Chapter shall upon application be licensed to practice land surveying, providing a written application is filed with the Board within one year next after June 19, 1975.

i. Photogrammetrists. – Any person presently practicing photogrammetry with at least seven years of experience in the profession, two or more of which shall have been in responsible charge of photogrammetric mapping projects meeting National Map Accuracy Standards shall, upon application, be licensed to practice land surveying, provided:

1. The applicant submit certified proof of graduation from high school, high school equivalency, or higher degree;
2. The applicant submit proof of employment in responsible charge as a photogrammetrist practicing within the State of North Carolina to include itemized reports detailing methods, procedures, amount of applicant's personal involvement and the name, address, and telephone numbers of the client for five projects completed by the applicant with the State. A final map for one of the five projects shall also be submitted;

3. Five references to the applicant's character and quality of work, three of which shall be from professional land surveyors, are submitted to the Board; and
4. The application is submitted to the Board by July 1, 1999. After July 1, 1999, no photogrammetrist shall be licensed without meeting the same requirements as to education, length of experience, and testing required of all land surveying applicants.

The Board shall require an applicant to submit exhibits, drawings, plats or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised.

Land surveying encompasses a number of disciplines including geodetic surveying, hydrographic surveying, cadastral surveying, engineering surveying, route surveying, photogrammetric (aerial) surveying, and topographic surveying. A professional land surveyor shall practice only within the surveyor's area of expertise.

(2) As a land surveyor intern (shall meet one):

a. Rightful possession of an associate degree in surveying technology approved by the Board, a record satisfactory to the Board of four years of progressive practical experience, two years of which shall have been under a practicing professional land surveyor, and satisfactorily passing a written and oral examination as required by the Board.
b. Repealed by Session Laws 2005-296, s. 1.
c. Graduation from high school or the completion of a high school equivalency certificate and a record satisfactory to the Board of 10 years of progressive, practical experience, six years of which shall have been under a practicing licensed land surveyor and satisfactorily passing any oral and written examinations required by the Board.
d. Graduation and examination. – A graduate of a surveying curriculum or other equivalent curriculum in surveying approved by the Board or a student who ~~has attained senior status~~is graduating within two semesters, or the equivalent, of the semester in which the fundamentals of surveying examination is administered, in an accredited surveying program of four years or more shall be admitted to the fundamentals of surveying examination. The applicant shall be notified if the examination was passed or not passed, and if passed the applicant shall be certified as a surveying intern if the applicant is otherwise qualified.

The Board shall require an applicant to submit exhibits, drawings, plats, or other tangible evidence of land surveying work executed by the applicant under proper supervision and which the applicant has personally accomplished or supervised."

SECTION 5. G.S. 89C-21(a) reads as rewritten:

"(a) The Board may reprimand the licensee, suspend, refuse to renew, refuse to reinstate, or revoke the certificate of licensure, require additional education or, as appropriate, require reexamination, for any engineer or land surveyor, who is ~~found:~~found guilty of any of the following:

(1) ~~Guilty of the practice of any fraud~~Fraud or deceit in obtaining or renewing a certificate of licensure or certificate of authorization.

(2) ~~Guilty of any gross negligence~~Gross negligence, incompetence, or misconduct in the practice of the profession.

(3) ~~Guilty of any felony or~~Conviction of, or entry of a plea of guilty or nolo contendere to, any crime that is a felony, whether or not related to the practice of engineering or surveying; conviction of, or entry of a plea of guilty or nolo contendere to, any crime, whether a felony, misdemeanor, or otherwise, where an essential element of the crime is dishonesty or when the crime is directly related to the practice of engineering or surveying; or conviction of, or entry of a plea of guilty or nolo contendere, of any crime involving moral turpitude.

(4) ~~Guilty of violation~~ Violation of any provisions of this Chapter, the Rules of Professional Conduct, or any rules as adopted by the Board.

(5) ~~To have been~~ Being declared insane or incompetent by a court of competent jurisdiction and ~~has~~ having not later been lawfully declared sane or competent.

(6) ~~Guilty of professional~~Professional incompetence. In the event the Board finds that a certificate holder is incompetent the Board may, in its discretion, require oral or written examinations, or other indication of the certificate holder's fitness to practice engineering or land surveying and suspend the license during any such period."

SECTION 6. G.S.89C-22 reads as rewritten:

"**§ 89C-22. Disciplinary action – Charges; procedure.**

(a) Any person may prefer charges of fraud, deceit, gross negligence, incompetence, misconduct, or ~~violation~~ violations of this Chapter, the rules of professional conduct, or any rules adopted by the Board against any Board ~~registrant.~~licensee. The charges shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the Board.

(b) All charges, unless dismissed by the Board as unfounded or ~~trivial,~~trivial or unless settled informally, shall be heard by the Board as provided under the requirements of Chapter 150B of the General Statutes.

(c) If, after a hearing, a majority of the Board votes in favor of sustaining the charges, the Board shall reprimand, levy a civil penalty, suspend, refuse to renew, refuse to reinstate, or revoke the licensee's ~~certificate.~~certificate, require additional education or, as appropriate, require reexamination.

(d) A licensee who is aggrieved by a final decision of the Board may appeal for judicial review as provided by Article 4 of Chapter 150B.

(e) The Board may, upon petition of an individual or an entity whose certificate has been revoked, for sufficient reasons as it may determine, reissue a certificate of licensure or authorization, provided that a majority of the members of the Board vote in favor of such issuance."

SECTION 7. G.S. 89C-25 reads as rewritten:

"**§ 89C-25. Limitations on application of Chapter.**

This Chapter shall not be construed to prevent or affect:

...

~~(2) The practice of professional engineering or land surveying in this State or by any person not a resident of this State and having no established place of business in this State when this practice does not aggregate more than 90 days in any calendar year, whether performed in this State or elsewhere, or involve more than one specific project; provided, however, that the person is licensed to practice the profession in the person's own state or country, in which the requirements and qualifications for obtaining a certificate of~~

~~licensure are satisfactory to the Board; in which case the person shall apply for and the Board will issue a temporary permit.~~

~~(3) The practice of professional engineering or land surveying in this State not to aggregate more than 90 days by any person residing in this State, but whose residence has not been of sufficient duration for the Board to grant or deny licensure; provided, however, the person shall have filed an application for licensure as a professional engineer or professional land surveyor and shall have paid the fee provided for in G.S. 89C-14, and provided that the person is licensed to practice professional engineering or professional land surveying in the person's own state or country in which the requirements and qualifications for obtaining a certificate of licensure are satisfactory to the Board, in which case the person shall apply for and the Board will issue a temporary permit.~~

...."

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 637

Short Title:	Adoption Law Changes.	(Public)
Sponsors:	Representatives Jordan and Stevens (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS APPLICABLE TO ADOPTIONS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-2-607(c) reads as rewritten:

"(c) A parent or guardian whose consent or relinquishment was obtained by fraud or duress may, within six months of the time the fraud or duress is or ought reasonably to have been discovered, move to have the decree of adoption set aside and the consent declared void. A parent or guardian whose consent was necessary under this Chapter but was not obtained may, within six months of the time the omission is or ought reasonably to have been discovered, move to have the decree of adoption set aside. Any action for damages against an adoptee or the adoptive parents for fraud or duress in obtaining a consent must be brought within six months of the time the fraud or duress is or ought reasonably to have been discovered. However, no action to set aside a decree of adoption may be brought more than one year after the date on which the decree of adoption was entered."

SECTION 2. G.S. 48-3-608(b) reads as rewritten:

"(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment prepared substantially in conformance with the requirements of G.S. 48-3-303, or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307."

SECTION 3. G.S. 48-3-303(c)(12) reads as rewritten:

"(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's income and financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section."

SECTION 4. G.S. 48-2-302(a) reads as rewritten:

"(a) Except for petitions filed pursuant to Articles 4 and 6 of this Chapter, a petition for adoption must be filed no later than 30 days after a minor is placed with the petitioner or this State acquires jurisdiction to hear the petition, whichever is later, unless the court extends or waives the time for filing."

SECTION 5. G.S. 48-2-401(a) reads as rewritten:

"(a) ~~No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the~~ The petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section."

SECTION 6. G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if:~~if any of the following occur:

(1) Before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment.

(3) After placement with a prospective adoptive parent occurs, but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment."

SECTION 7. This act becomes effective October 1, 2011, and applies to actions filed on or after that date.

HOUSE BILL 706

Short Title:	Alimony/Postseparation Support Changes.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or postseparation support pending at the time the judgment for divorce is ~~granted.~~granted, except as provided by G.S. 50-16.1A(4). Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony or postseparation support or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the judgment of absolute ~~divorce.~~divorce, except as provided by G.S. 50-16.1A(4)."

SECTION 2. G.S. 50-16.9 is amended by adding a new subsection to read:

"(a1) There is a rebuttable presumption that the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years is not an action in bad faith. Unless the presumption is rebutted, the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years constitutes a change of circumstances, and the court shall consider this change of circumstances when determining whether to modify an alimony or postseparation support order. This subsection applies to any order of alimony, alimony pendent lite, or postseparation support, including any order entered pursuant to a repealed statute."

SECTION 3. G.S. 52-10 is amended by adding a new subsection to read:

"(a1) Any contract between husband and wife, with or without valuable consideration, to waive and release all rights and obligations to postseparation support or alimony is valid and not inconsistent with public policy, if the contract is in writing and is acknowledged by both parties before a certifying officer, and such release may be pleaded in bar of any action or proceeding for the recovery of the rights so released."

SECTION 4. This act is effective October 1, 2011. Section 3 of this act applies to contracts entered into on or after that date.

HOUSE BILL 802

Short Title:	Child Support Order Stayed By Appeal.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT CLARIFYING THE LAWS PERTAINING TO THE STAYING OF ORDERS ON APPEAL AS RELATED TO CHILD CUSTODY, CHILD SUPPORT, AND ALIMONY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.3(a) reads as rewritten:

"(a) An order providing for the custody of a minor child is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A, Contempt, of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, ~~an~~ any order pertaining to child ~~custody~~ custody, whether pursuant to this Chapter or pursuant to an agreement for child custody, which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child custody until the appeal is decided, if justice requires."

SECTION 2. G.S. 50-13.4(f)(9) reads as rewritten:

"(f) Remedies for enforcement of support of minor children shall be available as herein provided.

...

(9) An order for the periodic payments of child support or a child support judgment that provides for periodic payments is enforceable by proceedings for civil contempt, and disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294, ~~an~~ any order for the payment of child ~~support~~ support, whether pursuant to this Chapter or pursuant to an agreement for child support, which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for child support until the appeal is decided, if justice requires.

...."

SECTION 3. G.S. 50-16.7(j) reads as rewritten:

"(j) Any order for the payment of alimony or postseparation support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt, as provided in Chapter 5A of the General Statutes.

Notwithstanding the provisions of G.S. 1-294 or G.S. 1-289, ~~an~~ any order for the periodic payment of ~~alimony~~ alimony, whether pursuant to this Chapter or pursuant to an agreement for alimony, that has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil contempt entered for alimony until the appeal is decided if justice requires."

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

HOUSE BILL 803

Short Title:	Allow Court to Assess Atty Fees/50C Orders.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT ALLOWING A COURT TO ASSESS ATTORNEYS' FEES WHEN A CIVIL NO-CONTACT ORDER IS BROUGHT WITHOUT FACTUAL BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-5(b)(7) reads as rewritten:

"(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

...

(7) Order other relief deemed necessary and appropriate by the ~~court.~~court, including assessing attorneys' fees when an action under this Chapter is brought without a factual basis."

SECTION 2. This act is effective when it becomes law and applies to actions brought on or after that date.

SENATE BILL 406

Short Title:	Repeal Crossbow Purchase Permit Requirement.	(Public)
Sponsors:	Senators Brock, East, and Newton.	
Referred to:	Judiciary II.	

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE REQUIREMENT THAT A PERSON OBTAIN A PERMIT TO RECEIVE, SELL, PURCHASE, OR OTHERWISE TRANSFER A CROSSBOW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-402 reads as rewritten:

"**§ 14-402. Sale of certain weapons without permit forbidden.**

(a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol ~~or crossbow~~ unless: (i) a license or permit is first obtained under this Article by the purchaser or receiver from the sheriff of the county in which the purchaser or receiver resides; or (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the purchase.

It is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol ~~or crossbow~~ without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor.

(b) This section does not apply to an antique firearm or an historic edged weapon.

(c) The following definitions apply in this Article:

(1) Antique firearm. – Defined in G.S. 14-409.11.

~~(2) Bolt. – A projectile made to be discharged from a crossbow. The bolt differs from an arrow in that the bolt is heavier and shorter than an arrow.~~

~~(3) Crossbow. – A mechanical device consisting of, but not limited to, strings, cables, and prods transversely mounted on either a shoulder or hand-held stock. This device is mechanically held at full or partial draw and released by a trigger or similar mechanism that is incorporated into a stock or handle. When operated, the crossbow discharges a projectile known as a bolt.~~

(4) Historic edged weapon. – Defined in G.S. 14-409.12.

~~(5) Manufacturer of crossbows. – A corporation that manufactures or produces crossbows.~~

~~(6) Retail dealer of crossbows. – A corporation that sells crossbows to the ultimate consumer of the product.~~

~~(7) Wholesale dealer of crossbows. – A corporation that acquires crossbows for sale to another wholesale dealer of crossbows or to a retail dealer of crossbows.~~"

SECTION 2. G.S. 14-404(c)(1) reads as rewritten:

"(c) A permit may not be issued to the following persons:

(1) One who is under an indictment or information for or has been convicted in any state, or in any court of the United States, of a felony (other than an offense pertaining to antitrust violations, unfair trade practices, or restraints of trade). However, a person who has been convicted of a felony in a court of any state or in a court of the United States and (i) who is later pardoned, or (ii) whose firearms rights have been restored pursuant to G.S. 14-415.4, may obtain a permit, if the purchase or receipt of a pistol ~~or crossbow~~ permitted in this Article does not violate a condition of the pardon or restoration of firearms rights."

SECTION 3. G.S. 14-406(b) is repealed.

SECTION 4. G.S. 14-406.1 is repealed.

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

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary Sub C

DATE: April 13, 2011 **Room:** LOB 415

*Name: Tiara Smalls

County: Cumberland

Sponsor: Earon Parmon

*Name: Danielle Henderson

County: Pi H

Sponsor: Bill Cook

*Name:

County:

Sponsor:

*Name:

County:

Sponsor:

*Name:

County:

Sponsor:

House Sgt-At Arms:

1. Name: Larry Elliot
2. Name: [illegible]
3. Name: Ken Kirby
4. Name:
5. Name:
6. Name:

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — April 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amber Horton	Meredith College Intern
Debra Horton	NCPTA
CHRIS DILLON	NCWRC
GORDON MYERS	" "
Mildred Spearman	NCAOC
Barbara Mann	Gen'l Counsel's Off
Tammy Johnson	DHHS/DSS
Lindsey Moore	Peace College
Carye Dunn	DRNC
John Robert	NCAHA
Betsy Bailey	PBNC

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carlene McNulty	NC Justice Center
Al Ripley	"
Courtney Denning	NC Bar Association
Brinton Wright	"
David Holm	"
Allison Cooper	Bailey & Dixon

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — April 13, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Ritter	NCBELS 4601 Six Forks Rd Raleigh
J Goodman	NC Chamber
Rick Zechini	Progress Energy

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, April 20, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, April 20, 2011, at 10:05 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Moore presided and called the meeting to order. Rep. Moore recognized the pages and sergeant-of-arms.

The following bills were considered:

HB 637, Adoption Law Changes (Representatives Jordan and Stevens, Primary Sponsors). Chair Moore recognized Rep. Jordan to speak on the bill. Chair Moore accepted a motion from Rep. Weiss to place the Proposed Committee Substitute before the committee. Janice Paul, staff, was recognized to explain the bill. Chair Moore recognized Rep. Jones for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 640, Foreign Laws/Protect Constitutional Rights (Representatives Cleveland and Killian, Primary Sponsors). Chair Moore recognized Rep. Cleveland to speak on the bill. Janice Paul, staff, explained the bill. Discussion by the committee. Kim Crouch, NC Bar Association, spoke on the bill. Rep. Dixon was recognized by Chair Moore for a motion of a favorable report. Division was called, and vote was 7 in favor and 4 against. With the majority being in favor, the motion carried.

HB 846, Expand Access/Death Certificate/Adult Adoptee (Representative LaRoque, Primary Sponsor). Rep. LaRoque was recognized by Chair Moore to speak on the bill. Rep. Jones was recognized for a motion of a favorable report. Discussion of the bill. With the majority being in favor, the motion carried.

HB 803, Allow Court to Assess Atty Fees/50C Orders (Representative Rhyne, Jr., Primary Sponsor). Rep. Rhyne recognized by Rep. Moore to speak on the bill. Rep. Cleveland made a motion to place the Proposed Committee Substitute before the committee. Discussion followed. Rep. Hackney offered an amendment that was adopted. A motion was made for a favorable report on the proposed committee substitute as amended and unfavorable to the original bill. With the majority in favor, the motion carried.

HB 857, Sex Offenders/Electronic Monitoring (Representatives Holloway, Moore, Randleman, and Daughtry, Primary Sponsors). Rep. Holloway was recognized to speak on the bill. Chair Moore recognized Rep. Dixon for a motion to place the committee substitute before the

committee. Tim Moose, Director of the NC Division of Community Corrections, was recognized to speak. Rep. Cleveland was recognized to set forth an amendment. The amendment was adopted. Rep. Jones was recognized by Chair Moore for a motion of a favorable report to the Proposed Committee Substitute as amended; and unfavorable to the original bill. With the majority in favor, the motion carried.

HB 706, Alimony/Postseparation Support Changes (Representative Rhyne, Jr., Primary Sponsor). Chair Moore recognized Rep. Rhyne to speak on the bill. Rep. Cleveland presided during the discussion. Chair Moore recognized David Holmes, with the NC Bar Association, to speak on the bill. Discussion followed. Kim Crouch, NC Bar Association, was also recognized to speak. Rep. Hackney was recognized to place an amendment before the committee. Discussion of the amendment by the committee. A vote was called on the amendment. With the majority not in favor of the amendment, the amendment fails. Rep. Jordan made a motion for a favorable report. With the majority in favor, the motion carried.

HB 734, Require Photo ID/Food Stamps Program (Representatives Warren, Brown, Lewis, and Moore, Primary Sponsors). Chair Moore recognized Rep. Warren to speak on the bill. Discussion. Denise Thomas, Fiscal Research, was recognized to speak. Chair Moore said the bill has a serial referral to Finance. Chair Moore recognized Dean Simpson from the Dept. of Health and Human Services to speak on the bill and answer questions. Rep. Jones sends forth an amendment, and with the majority being in favor, the amendment is adopted. Rep. Rhyne presides over further discussion of the bill. Rep. Moore made a motion for a favorable report of the bill as amended. With the majority being in favor, the motion carried.

The meeting adjourned at 11:45 a.m.

Respectfully submitted,

Representative Tim Moore
Chair

Nancy Garriss
Committee Clerk

Representative Johnathan Rhyne, Jr.
Chair

AGENDA

House Judiciary Subcommittee C
Wednesday, April 20, 2011
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 640	Foreign Laws/Protect Constitutional Rights.	Representative Cleveland Representative Killian
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 734	Require Photo ID/Food Stamps Program.	Representative Warren Representative Brown Representative Lewis Representative Moore
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
HB 846	Expand Access/Death Certificate/Adult Adoptee.	Representative LaRoque
HB 857	Sex Offenders/Electronic Monitoring.	Representative Holloway Representative Moore Representative Randleman Representative Daughtry

ADJOURNMENT

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 20, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: Removed H650 and H690; added H867

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 640	Foreign Laws/Protect Constitutional Rights.	Representative Cleveland Representative Killian
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 734	Require Photo ID/Food Stamps Program.	Representative Warren Representative Brown Representative Lewis Representative Moore
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
HB 846	Expand Access/Death Certificate/Adult Adoptee.	Representative LaRoque
HB 857	Sex Offenders/Electronic Monitoring.	Representative Holloway Representative Moore Representative Randleman Representative Daughtry

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **April 19, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 20, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: HB 690 and HB 734 added

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 640	Foreign Laws/Protect Constitutional Rights.	Representative Cleveland Representative Killian
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 734	Require Photo ID/Food Stamps Program.	Representative Warren Representative Brown Representative Lewis Representative Moore
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
HB 846	Expand Access/Death Certificate/Adult Adoptee.	Representative LaRoque

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **April 18, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, April 20, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 637	Adoption Law Changes.	Representative Jordan Representative Stevens
HB 640	Foreign Laws/Protect Constitutional Rights.	Representative Cleveland Representative Killian
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 803	Allow Court to Assess Atty Fees/50C Orders.	Representative Rhyne, Jr.
HB 846	Expand Access/Death Certificate/Adult Adoptee.	Representative LaRoque

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1 PM** o'clock on **April 14, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 637 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS APPLICABLE TO ADOPTIONS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 640 A BILL TO BE ENTITLED AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE NORTH CAROLINA AND UNITED STATES CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 706 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 734 A BILL TO BE ENTITLED AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ISSUE TO PARTICIPANTS IN THE SUPPLEMENTAL FOOD AND NUTRITION PROGRAM (SNAP) DEBIT CARDS THAT CONTAIN PHOTO IDENTIFICATION ON THE CARD.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill, and recommendation that the committee substitute bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 803 A BILL TO BE ENTITLED AN ACT ALLOWING A COURT TO ASSESS ATTORNEYS' FEES WHEN A CIVIL NO-CONTACT ORDER IS BROUGHT WITHOUT FACTUAL BASIS.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 846 A BILL TO BE ENTITLED AN ACT TO EXPAND THE SCOPE OF THE LAW THAT ALLOWS AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF A BIOLOGICAL PARENT OR AN ADULT ADOPTEE TO INCLUDE A LINEAL ASCENDANT OF A BIOLOGICAL PARENT WHEN IT IS DETERMINED THE BIOLOGICAL PARENT, ADULT ADOPTEE, OR THE LINEAL ASCENDANT OF THE BIOLOGICAL PARENT IS DECEASED.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for

HB 857 A BILL TO BE ENTITLED AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION TO REPLACE THE CURRENT ELECTRONIC MONITORING SERVICE AND EQUIPMENT USED TO MONITOR CONVICTED SEX OFFENDERS WITH A NEW SYSTEM THAT PROVIDES EXCLUSION ZONES AROUND ALL OF THE STATE'S K-12 SCHOOL CAMPUSES.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 637
PROPOSED COMMITTEE SUBSTITUTE H637-PCS11194-TJ-4

Short Title: Adoption Law Changes. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS APPLICABLE TO ADOPTIONS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-3-608(b) reads as rewritten:

"(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor, then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment prepared substantially in conformance with the requirements of G.S. 48-3-303, or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307."

SECTION 2. G.S. 48-3-303(c)(12) reads as rewritten:

"(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's income and financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section."

SECTION 3. G.S. 48-2-302(a) is repealed.

SECTION 4. G.S. 48-2-401(a) reads as rewritten:

"(a) No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the petitioner shall initiate service of~~serve~~ notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section."

SECTION 5. G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if:~~if any of the following occur:

(1) Before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment.

(3) After placement with a prospective adoptive parent occurs, but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment."

SECTION 6. This act becomes effective October 1, 2011, and applies to actions filed on or after that date.

HOUSE BILL 637: Adoption Law Changes

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 19, 2011
Introduced by:	Reps. Jordan, Stevens	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H637-CSTJ-4		

SUMMARY: The Proposed Committee Substitute for House Bill 637 would amend G.S. Chapter 48, "Adoptions," as recommended by the North Carolina Bar Association.

BILL ANALYSIS:

Section 1 would amend G.S. 48-3-608(b) to provide that a preplacement assessment (adoption home study) must be prepared "substantially in conformance" with the requirements set out in G.S. 48-3-303, entitled "Content and timing of preplacement assessment."

Section 2 would permit the agency preparing the adoption home study to redact certain detailed income information of the prospective parent from the copy of the home study given to the placing parent.

Section 3 would repeal G.S. 48-2-302(a) which requires a petition for adoption to be filed within 30 days after placement of the minor for adoption.

Section 4 would provide that a petitioner must *initiate* service of notice of the filing of a petition for adoption within 30 days after the filing date.

Section 6. Current law allows the agency and the person relinquishing custody to agree to rescind a relinquishment *before* the agency places the minor for adoption. The PCS for House Bill 637 would add a provision allowing a relinquishment to become void *after* a minor is placed *if* the agency, the person relinquishing custody, and the prospective adoptive parent mutually agree to the rescission.

EFFECTIVE DATE: This act becomes effective October 1, 2011, and applies to actions filed on or after that date.

H637-SMTJ-24(CSTJ-4) v2

HOUSE BILL 637

Short Title:	Adoption Law Changes.	(Public)
Sponsors:	Representatives Jordan and Stevens (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS APPLICABLE TO ADOPTIONS, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-2-607(c) reads as rewritten:

"(c) A parent or guardian whose consent or relinquishment was obtained by fraud or duress may, within six months of the time the fraud or duress is or ought reasonably to have been discovered, move to have the decree of adoption set aside and the consent declared void. A parent or guardian whose consent was necessary under this Chapter but was not obtained may, within six months of the time the omission is or ought reasonably to have been discovered, move to have the decree of adoption set aside. Any action for damages against an adoptee or the adoptive parents for fraud or duress in obtaining a consent must be brought within six months of the time the fraud or duress is or ought reasonably to have been discovered. However, no action to set aside a decree of adoption may be brought more than one year after the date on which the decree of adoption was entered."

SECTION 2. G.S. 48-3-608(b) reads as rewritten:

"(b) In a direct placement, if:

(1) A preplacement assessment is required, and

(2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment prepared substantially in conformance with the requirements of G.S. 48-3-303, or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307."

SECTION 3. G.S. 48-3-303(c)(12) reads as rewritten:

"(12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's income and financial account balances and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section."

SECTION 4. G.S. 48-2-302(a) reads as rewritten:

"(a) Except for petitions filed pursuant to Articles 4 and 6 of this Chapter, a petition for adoption must be filed no later than 30 days after a minor is placed with the petitioner or this State acquires jurisdiction to hear the petition, whichever is later, unless the court extends or waives the time for filing."

SECTION 5. G.S. 48-2-401(a) reads as rewritten:

"(a) ~~No later than 30 days after a petition for adoption is filed pursuant to Part 3 of this Article, the~~ The petitioner shall serve notice of the filing on the persons required to receive notice under subsections (b), (c), and (d) of this section."

SECTION 6. G.S. 48-3-707(a) reads as rewritten:

"(a) A relinquishment shall become void ~~if:~~ if any of the following occur:

(1) Before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.

(2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment.

(3) After placement with a prospective adoptive parent occurs, but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment."

SECTION 7. This act becomes effective October 1, 2011, and applies to actions filed on or after that date.

HOUSE BILL 640

Short Title:	Foreign Laws/Protect Constitutional Rights.	(Public)
Sponsors:	Representatives Cleveland and Killian (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROTECT RIGHTS AND PRIVILEGES GRANTED UNDER THE NORTH CAROLINA AND UNITED STATES CONSTITUTIONS IN THE APPLICATION OF FOREIGN LAW.

The General Assembly of North Carolina enacts:

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

"Article 7A.

"Application of Foreign Law.

"**§ 1-87.2. Definitions.**

The following definitions apply in this Article:

(1) Constitutional right. – A right of a natural person guaranteed by the North Carolina Constitution or the United States Constitution.

(2) Foreign law. – A law, rule, legal code, or legal system established and used or applied in a foreign venue or forum.

(3) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"**§ 1-87.3. Public policy.**

The General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a right of a natural person guaranteed by the North Carolina Constitution or the United States Constitution. The public policies expressed in this section shall apply only to actual or foreseeable violations of a constitutional right resulting from the application of the foreign law.

"**§ 1-87.4. Nonapplication of foreign law that would violate constitutional rights.**

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding if doing so would violate a constitutional right.

"**§ 1-87.5. Interpretation of contracts providing for choice of foreign law.**

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the constitutional rights of the parties.

(b) If enforcement of any contract provision or other agreement for the choice of foreign law would result in a violation of a constitutional right of one or more of the parties, the agreement or contract shall be modified or amended to the extent necessary to preserve the constitutional rights of the parties.

"**§ 1-87.6. Interpretation of contracts providing for choice of foreign venue or forum.**

If the enforcement of any contract provision or other agreement providing for a choice of a foreign venue or forum would result in a violation of a constitutional right of one or more of the parties, that provision shall be modified or amended to the extent necessary to preserve the constitutional rights of the parties.

"**§ 1-87.7. Motions to transfer proceedings to a foreign venue or forum.**

If a natural person subject to personal jurisdiction in this State seeks to maintain litigation, arbitration proceeding, or similarly binding proceedings in this State, and if a court of this State finds that granting a motion by another party to transfer the proceeding to a foreign venue or forum would likely lead to the violation of the constitutional rights of the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied.

"**§ 1-87.8. Contracts not capable of modification to preserve constitutional rights void.**

Any contractual provision or agreement incapable of being modified or amended in order to preserve the constitutional rights of the parties pursuant to the provisions of this Article shall be null and void.

"**§ 1-87.9. Strict construction of waivers of constitutional rights.**

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State."

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

HOUSE BILL 640:
Foreign Laws/Protect Constitutional Rights

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 15, 2011
Introduced by:	Reps. Cleveland, Killian	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 640 would protect rights and privileges granted under the North Carolina and United States constitutions in the application of foreign law.***

CURRENT LAW: The Constitution of the United States is the supreme law of the United States, and the framework for the organization of the U. S. government and for the relationship of the federal government with the states, citizens, and all people within the United States. The North Carolina State Constitution provides a framework of government for the State and its subdivisions, and provides protections for individuals.

BILL ANALYSIS: House Bill 640 would prohibit the application or enforcement of a foreign law in a legal proceeding if doing so would violate a right granted by the North Carolina or United States constitutions. A provision in a contract or agreement calling for the application of foreign law or choosing a foreign venue would not be enforceable if it violated a constitutional right of a party, and would be void if the provision could not be modified. A court would be required to deny certain motions to transfer a case to another jurisdiction if the transfer would be likely to violate the constitutional rights of the nonmoving party.

EFFECTIVE DATE: This act is effective when it becomes law.

H640-SMTJ-21(e1) v1

HOUSE BILL 706

Short Title:	Alimony/Postseparation Support Changes.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or postseparation support pending at the time the judgment for divorce is ~~granted.~~granted, except as provided by G.S. 50-16.1A(4). Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony or postseparation support or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the judgment of absolute ~~divorce.~~divorce, except as provided by G.S. 50-16.1A(4)."

SECTION 2. G.S. 50-16.9 is amended by adding a new subsection to read:

"(a1) There is a rebuttable presumption that the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years is not an action in bad faith. Unless the presumption is rebutted, the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years constitutes a change of circumstances, and the court shall consider this change of circumstances when determining whether to modify an alimony or postseparation support order. This subsection applies to any order of alimony, alimony pendent lite, or postseparation support, including any order entered pursuant to a repealed statute."

SECTION 3. G.S. 52-10 is amended by adding a new subsection to read:

"(a1) Any contract between husband and wife, with or without valuable consideration, to waive and release all rights and obligations to postseparation support or alimony is valid and not inconsistent with public policy, if the contract is in writing and is acknowledged by both parties before a certifying officer, and such release may be pleaded in bar of any action or proceeding for the recovery of the rights so released."

SECTION 4. This act is effective October 1, 2011. Section 3 of this act applies to contracts entered into on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 706 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hackney
Sen.)

1 moves to amend the bill on page 1, line 23-28
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the section and renumbering
4 the remaining section
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 706:
Alimony/Postseparation Support Changes

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 13, 2011
Introduced by:	Rep. Rhyne	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Bill 706 makes the following changes to the law with regard to alimony and postseparation support:***

- ***Makes a conforming change to G.S. 50-11 (effects of absolute divorce) to account for a previous amendment to G.S. 50-16.1A(4) that provides that postseparation support is terminated upon entry of absolute divorce, if no claim for alimony is pending at that time.***
- ***Creates a rebuttable presumption that retirement of the supporting spouse after the age of 67 is not in bad faith and would be a change of circumstances to consider for modification of alimony or postseparation support orders.***
- ***Allows spouses to enter into contracts waiving their rights to alimony and postseparation support during their marriage.***

BILL ANALYSIS:

Section 1 of the bill amends G.S. 50-11(c), which provides that a judgment of divorce shall not affect the rights of either spouse with regard to an action for alimony or postseparation support. In 2005, G.S. 50-16.1A(4) (definition of 'postseparation support') was amended to provide that support terminates upon entry of a judgment for absolute divorce if no claim for alimony is pending at that time. This section amends G.S. 50-11(c) to reflect the earlier amendment.

Section 2 of the bill amends G.S. 50-16.9 (modification of alimony or postseparation support orders) by adding a new subsection (a1). Subsection (a) provides that an order for alimony or postseparation support may be modified upon a motion and showing of changed circumstances. New subsection (a1) adds a rebuttable presumption that the voluntary retirement of a supporting spouse after the age of 67 would not be considered an action in bad faith. Unless that presumption is rebutted, the retirement would be a change of circumstances to be considered in determining whether to modify an order.

Section 3 of the bill amends G.S. 52-10 to allow spouses to enter into contracts to waive the right to postseparation support or alimony. The contract must be in writing and acknowledged by both parties before a certifying officer. Under current law, spouses may waive the right to postseparation support or alimony before the marriage in a premarital agreement or after separation in a separation agreement.

EFFECTIVE DATE: The act is effective October 1, 2011, and Section 3 of the bill applies to contracts entered into on or after that date.

H706-SMSU-24(e1) v1

HOUSE BILL 734

Short Title:	Require Photo ID/Food Stamps Program.	(Public)
Sponsors:	Representatives H. Warren, L. Brown, Lewis, and T. Moore (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C, if favorable, Finance.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT REQUIRING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ISSUE TO PARTICIPANTS IN THE SUPPLEMENTAL FOOD AND NUTRITION PROGRAM (SNAP) DEBIT CARDS THAT CONTAIN PHOTO IDENTIFICATION ON THE CARD.

The General Assembly of North Carolina enacts:

SECTION 1. Part 5 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"**§ 108A-52.1. Require photo identification on electronic food and nutrition benefits cards; replacement of stolen, lost, or damaged cards.**

(a) The Department shall issue to recipients of electronic food and nutrition benefits an electronic benefits transaction (EBT) card that contains a color photograph of the recipient and all of the following information:

(1) The recipient's full name.

(2) The recipient's mailing address and residence address.

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

(4) The recipient's date of birth.

(5) The recipient's signature.

Upon issuing an EBT card, the Department shall make provisions for one additional individual to use the card on behalf of the primary benefits recipient. The alternate user shall be named on the card, and the alternate user shall be required to provide identification when using the card on behalf of the recipient.

(b) The Department shall issue a replacement electronic benefits transaction EBT card for the primary benefits recipient or for the alternate user at a cost of one and one-half times the production cost of the EBT card. Recipients may be issued additional replacement cards at a cost of twenty-five dollars ($25.00) for each EBT card."

SECTION 2. This act becomes effective July 1, 2011.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 734

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

H734-ATJ-6 [v.1]

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

Date _____,2011

Representative Jones

moves to amend the bill on page 1, line 28, by deleting the phrase "2011." and substituting the phrase "2012.".

SIGNED Bert Jones
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 734:
Require Photo ID/Food Stamps Program

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C, if favorable, Finance	**Date:**	April 18, 2011
Introduced by:	Reps. H. Warren, L. Brown, Lewis, T. Moore	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 734 would require the Department of Health and Human Services to issue to participants in the Supplemental Food and Nutrition Program (SNAP) debit cards that contain photo identification on the card.

CURRENT LAW: No current statutory provision requires a photo on SNAP debit cards.

BILL ANALYSIS: House Bill 734 would amend the chapter on "Social Services" to add a provision that every electronic benefits transaction card issued to a recipient of SNAP (formerly "food stamp") benefits must include on its face a color photograph of the recipient, along with other specific identifying information. An additional person could be named on the card and use the card upon presentation of identification. The bill provides for the issuance of replacement cards and specifies the cost to the cardholder for each replacement.

EFFECTIVE DATE: The act becomes effective July 1, 2011.

H734-SMTJ-22(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 803
PROPOSED COMMITTEE SUBSTITUTE H803-CSSU-12 [v.1]

4/13/2011 12:00:00 PM

Short Title: Allow Court to Assess Atty Fees/50C Orders. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT ALLOWING A COURT TO ASSESS ATTORNEYS' FEES IN CIVIL NO-CONTACT ORDERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-5(b)(7) reads as rewritten:

"(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

...

(7) Order other relief deemed necessary and appropriate by the ~~court.~~court, including assessing attorneys' fees to either party."

SECTION 2. This act is effective when it becomes law and applies to actions brought on or after that date.

HOUSE BILL 803

Short Title:	Allow Court to Assess Atty Fees/50C Orders.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT ALLOWING A COURT TO ASSESS ATTORNEYS' FEES WHEN A CIVIL NO-CONTACT ORDER IS BROUGHT WITHOUT FACTUAL BASIS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50C-5(b)(7) reads as rewritten:

"(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

...

(7) Order other relief deemed necessary and appropriate by the ~~court.~~court, including assessing attorneys' fees when an action under this Chapter is brought without a factual basis."

SECTION 2. This act is effective when it becomes law and applies to actions brought on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 803 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

1 moves to amend the bill on page 1, line 5 12-13
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting the line to read:
4 " Section 2. This act is effective
5 October 1, 2011, and applies to actions
6 filed on or after that date."
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PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE PCS 803:
Allow Court to Assess Atty Fees/50C Orders

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 20, 2011
Introduced by:	Rep. Rhyne	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition H803-CSSU-12		

SUMMARY: ***The Proposed Committee Substitute for House Bill 803 would authorize the court to assess attorneys' fees in Chapter 50C civil no-contact orders.***

CURRENT LAW: In 2004, the General Assembly enacted Chapter 50C of the General Statutes, creating civil no-contact protective orders. Courts can issue these protective orders in situations where a person has been a victim of stalking or nonconsensual sexual conduct committed by a person with whom the victim is not in a personal relationship.

Recovery of attorneys' fees is not authorized under Chapter 50C.

BILL ANALYSIS: The PCS for House Bill 803 would authorize the court to include in an order issued under Chapter 50C the assessment of attorneys' fees.

EFFECTIVE DATE: The act would be effective when it becomes law, and would apply to actions brought on or after that date.

H803-SMSU-31(CSSU-12) v1

HOUSE BILL 846

Short Title:	Expand Access/Death Certificate/Adult Adoptee.	(Public)
Sponsors:	Representative LaRoque (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE SCOPE OF THE LAW THAT ALLOWS AN AGENCY ACTING AS A CONFIDENTIAL INTERMEDIARY TO OBTAIN A COPY OF A DEATH CERTIFICATE OF A BIOLOGICAL PARENT OR AN ADULT ADOPTEE TO INCLUDE A LINEAL ASCENDANT OF A BIOLOGICAL PARENT WHEN IT IS DETERMINED THE BIOLOGICAL PARENT, ADULT ADOPTEE, OR THE LINEAL ASCENDANT OF THE BIOLOGICAL PARENT IS DECEASED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-9-104(d) reads as rewritten:

"(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is ~~deceased,~~ deceased and upon further search determines that a lineal ascendant of the person who is the subject of the search is also deceased, the agency may obtain a copy of the death certificate of both the deceased person who is the subject of the search and any lineal ascendant of the person who is the subject of the search pursuant to G.S. 130A-93 and deliver it to the person who requested the services."

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

HOUSE BILL 846:
Expand Access/Death Certificate/Adult Adoptee

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 20, 2011
Introduced by:	Rep. LaRoque	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 846 would allow confidential intermediaries in adoptions to obtain the death certificate of a lineal ascendant of a biological parent when a search reveals that the lineal ascendant is deceased.

CURRENT LAW: Currently, NC adoption records are closed. The law provides that, with certain exceptions, no one may release a record that would lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an adoptee's birth sibling or grandparent. Exceptions are available through a court order, through voluntary consent, or through the services of a confidential intermediary. A confidential intermediary is a licensed adoption agency staff person authorized to act as a 3rd party to facilitate contact between an adult adoptee or the adult lineal descendant of a deceased adoptee and the biological parent. To facilitate contact or share the information, the confidential intermediary must have the written consent of all parties.

BILL ANALYSIS: House Bill 846 would expand the law that allows a confidential intermediary to obtain the death certificate of a person who is the subject of a search. The bill would allow the intermediary to obtain the death certificate of a lineal ascendant of the person who is the subject of the search if the search reveals that the person is deceased.

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

H846-SMSU-32(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 857
PROPOSED COMMITTEE SUBSTITUTE H857-CSTJ-5 [v.1]

4/19/2011 8:26:06 PM

Short Title: Sex Offenders/Electronic Monitoring. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION TO REPLACE THE CURRENT ELECTRONIC MONITORING SERVICE AND EQUIPMENT USED TO MONITOR CONVICTED SEX OFFENDERS WITH A NEW SYSTEM THAT PROVIDES EXCLUSION ZONES AROUND ALL OF THE STATE'S K-12 SCHOOL CAMPUSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-531(5a) reads as rewritten:

"(5a) House arrest with electronic monitoring. – Pretrial release in which the offender is required to remain at his or her residence unless the court authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear ~~a~~an electronic monitoring device which permits the supervising agency to electronically monitor the offender's compliance with the condition. An active electronic monitoring device means a mechanism: that is not removed from the person's body; that is utilized by the supervising agency in conjunction with a web-based computer system that actively monitors, identifies and records a person's location at least once every minute twenty-four hours a day; and that has a battery life of at least forty-eight (48) hours without being recharged. In areas of the State where cellular coverage requires the use of an alternative device, the supervising agency may use an alternative device."

SECTION 2. G.S. 15A-1340.11(4a) reads as rewritten:

"(4a) House arrest with electronic monitoring. – Probation in which the offender is required to remain at his or her residence. The court, in the sentencing order, may authorize the offender to leave the offender's residence for employment, counseling, a course of study, vocational training, or other specific purposes and may modify that authorization. The probation officer may authorize the offender to leave the offender's residence for specific purposes not authorized in the court order upon approval of the probation officer's supervisor. The offender shall be required to wear ~~a~~an active electronic monitoring device which permits the supervising agency to monitor the offender's compliance with the condition. An active electronic monitoring device means a mechanism: that is not removed from the person's body; that

is utilized by the supervising agency in conjunction with a web-based computer system that actively monitors, identifies and records a person's location at least once every minute twenty-four hours a day; and that has a battery life of at least forty-eight (48) hours without being recharged. In areas of the State where cellular coverage requires the use of an alternative device, the supervising agency may use an alternative device."

SECTION 3. By January 1, 2012, the Department of Correction shall replace the electronic monitoring service and equipment currently being used to monitor convicted sex offenders with a provider that offers electronic monitoring equipment and service that provides exclusion zones around every K-12 school campus in the State. The new equipment shall have the ability to notify immediately the probation officer, supervising officer, or other proper authority that the convicted sex offender has violated one of the exclusion zones established so that proper action may be taken.

SECTION 4. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by June 1, 2012, regarding the implementation of the new electronic monitoring service and equipment and provide the Committee with its evaluation of how the new system is functioning and how it compares with other systems used by the Department for this same purpose.

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 857 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Cleveland
)
Sen.)

1 moves to amend the bill on page 2, line 7
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "January" and substituting
4 "March".
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ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 857:
Sex Offenders/Electronic Monitoring

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	April 19, 2011
Introduced by:	Reps. Holloway, T. Moore, Randleman, Daughtry	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H857-CSTJ-5		

SUMMARY: ***The Proposed Committee Substitute for House Bill 857 clarifies the definition of "electronic monitoring device" and directs the Department of Correction to replace the current electronic monitoring equipment and service used to monitor convicted sex offenders with a new system that provides exclusion zones around all of the State's K-12 school campuses.***

BILL ANALYSIS:

Sections 1 and 2 clarify the definition of "House arrest with electronic monitoring."

Section 3 directs the Department of Correction to replace current service and equipment with a new system that would provide exclusion zones around the State's K through 12 school campuses, and which could immediately notify supervising officers or authorities of a convicted sex offender's violation of an exclusion zone.

Section 4 directs the Department of Correction to make specified implementation status reports and evaluations by June 1, 2012.

EFFECTIVE DATE: This act is effective when it becomes law.

H857-SMTJ-23(CSTJ-5) v1

HOUSE BILL 857

Short Title:	Sex Offenders/Electronic Monitoring.	(Public)
Sponsors:	Representatives Holloway, T. Moore, Randleman, and Daughtry (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DEPARTMENT OF CORRECTION TO REPLACE THE CURRENT ELECTRONIC MONITORING SERVICE AND EQUIPMENT USED TO MONITOR CONVICTED SEX OFFENDERS WITH A NEW SYSTEM THAT PROVIDES EXCLUSION ZONES AROUND ALL OF THE STATE'S K-12 SCHOOL CAMPUSES.

The General Assembly of North Carolina enacts:

SECTION 1. By January 1, 2012, the Department of Correction shall replace the electronic monitoring service and equipment currently being used to monitor convicted sex offenders with a provider that offers electronic monitoring equipment and service that provides exclusion zones around every K-12 school campus in the State. The new equipment shall have the ability to notify immediately the probation officer, supervising officer, or other proper authority that the convicted sex offender has violated one of the exclusion zones established so that proper action may be taken.

SECTION 2. The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by June 1, 2012, regarding the implementation of the new electronic monitoring service and equipment and provide the Committee with its evaluation of how the new system is functioning and how it compares with other systems used by the Department for this same purpose.

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

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary Sub C

DATE: April 20, 2011 (10:00am) Room: 415 LOB

*Name: Mary Frances Foster

County: Cleveland

Sponsor: T. Moore.

*Name: Erin Wilson

County: Cleveland

Sponsor: T. Moore

*Name: Demery Moody

County: Cleveland

Sponsor: Alexander, K.

*Name:

County:

Sponsor:

*Name:

County:

Sponsor:

House Sgt-At Arms:

1. Name: Billy Jones
2. Name: R.L. Carter
3. Name:
4. Name:
5. Name:
6. Name:

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C - Family Law — April 20, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tony Comento	Vandeventer Black LLP 434 Fayetteville St, Suite 2000 Raleigh
Brad Trahan	Ric Killian
Kenneth Bell	Charlotte
Jim Mark	NCDOC
[illegible]	NC DHHS
Betsy Veitch	American Heart Assoc.
Brinton Wright	NC Bar Assn

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C - Family Law — April 20, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Greene	NCBA
David Holm	NCBA
Andrew Hinton	JLC
Sara Riggins	NCFPC
Allison Fowler	NC Grange
Heather Robinson	NCAWA
Louisa Warren	NC Justice Center
Grant Pendergraft	NC Sheriffs' Association
Andrew Cagle	NC Sheriffs' Assn.
Dean Simpson	DHHS

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terisa Heath	Rep LaRogue

Cancelled Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Tuesday, April 26, 2011
TIME: 15 minutes after session
LOCATION: 415 LOB
COMMENTS: Meeting has been cancelled for today.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore
HB 772	SORNA Compliance.	Representative
HB 795	Patient Access to Pathological Materials.	Representative Steen, II Representative Murry Representative McComas

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **April 26, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

AGENDA

House Judiciary Subcommittee C
Wednesday, April 26, 2011
Room 415 LOB
15 minutes after session

OPENING REMARKS

Representative Johnathan Rhyne, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore
HB 772	SORNA Compliance.	Representative
HB 795	Patient Access to Pathological Materials.	Representative Steen, II Representative Murry Representative McComas

ADJOURNMENT

Corrected Notice Meeting 15 minutes after session today

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Tuesday, April 26, 2011
TIME: 15 minutes after session today
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore
HB 772	SORNA Compliance.	Representative
HB 795	Patient Access to Pathological Materials.	Representative Steen, II Representative Murry Representative McComas

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1 PM** o'clock on **April 26, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Tuesday, April 26, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore
HB 772	SORNA Compliance.	Representative
HB 795	Patient Access to Pathological Materials.	Representative Steen, II Representative Murry Representative McComas

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1 PM** o'clock on **April 26, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

HOUSE BILL 271

Short Title:	Probation Officer/No Concealed Carry Required.	(Public)
Sponsors:	Representatives Guice, Horn, Ingle, and Faircloth (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PROHIBITION AGAINST CARRYING A CONCEALED WEAPON DOES NOT APPLY TO STATE PROBATION AND PAROLE CERTIFIED OFFICERS WHEN THEY ARE OFF-DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269(b) is amended by adding a new subdivision to read:

"(6) State probation or parole certified officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 2. This act becomes effective December 1, 2011.

HOUSE BILL 631

Short Title:	Postconviction Release Bonds.	(Public)
Sponsors:	Representatives Guice, Ingle, and Faircloth (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF BONDS TO SECURE THE APPEARANCE OF A DEFENDANT THAT IS RELEASED POSTCONVICTION AND IS DETERMINED TO HAVE ABSCONDED.

The General Assembly of North Carolina enacts:

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

"Article 82A.

"Postconviction Release Bonds.

"**§ 15A-1350.1. Bond to secure appearance upon notice defendant has absconded.**

(a) When a defendant is convicted of a criminal offense for which an active punishment is authorized, based on the class of offense and the defendant's prior record or conviction level under Article 81B of this Chapter, but the court imposes an intermediate or community punishment, the court may order the posting of a bond to secure the appearance of the defendant at a subsequent court proceeding. Notwithstanding the provisions of Article 26 of this Chapter, the appearance bond authorized in this section only applies to the condition that the defendant not abscond during a period of probation and is only subject to forfeiture if it is determined that the defendant has violated probation by absconding.

(b) A judge authorizing release of a defendant and ordering the posting of an appearance bond under this section shall require the filing of the bond with the clerk of the court in which the release was authorized.

"**§ 15A-1350.2. Qualifications of authorized bail agent.**

(a) To qualify as an approved bail agent for purposes of this Article, the agent must be licensed as a bail bondsman or runner by the North Carolina Commissioner of Insurance under Article 71 of Chapter 58 of the General Statutes and must possess a valid concealed handgun permit issued in accordance with Article 54B of Chapter 14 of the General Statutes.

(b) Any qualified bail agent filing an appearance bond with the clerk of court, as required by G.S. 15A-1350.1(b), must present to the clerk a current bail bonding license and a valid concealed handgun permit at the time the appearance bond is filed.

"**§ 15A-1350.3. Order for arrest; notice of violation; failure to appear as grounds to issue bond forfeiture.**

The court may issue an order for arrest upon notice by the defendant's probation officer that the person has violated the terms of probation by absconding. Upon issuance of the order for arrest, the court shall give the bail agent a minimum of 96 hours to surrender the defendant as provided in G.S. 15A-540(b). If the bail agent fails to surrender the defendant within the time

noticed by the court, then the bond shall be subject to forfeiture as provided in Part 2 of Article 26 of this Chapter."

SECTION 2. G.S. 15A-544.2(a) reads as rewritten:

"(a) The following information shall be entered on each bail bond executed under Part 1 of this ~~Article:~~Article or under Article 82B of this Chapter:

(1) The name and mailing address of the defendant.

(2) The name and mailing address of any accommodation bondsman executing the bond as surety.

(3) The name and license number of any professional bondsman executing the bond as surety and the name and license number of the runner executing the bail bond on behalf of the professional bondsman.

(4) The name of any insurance company executing the bond as surety, and the name, license number, and power of appointment number of the bail agent executing the bail bond on behalf of the insurance company."

SECTION 3. G.S. 15A-544.3(a) reads as rewritten:

"(a) If a defendant who was released under Part 1 of this Article or under Article 82B of this Chapter upon execution of a bail bond fails on any occasion to appear before the court as required, the court shall enter a forfeiture for the amount of that bail bond in favor of the State against the defendant and against each surety on the bail bond."

SECTION 4. This act becomes effective December 1, 2011, and applies to defendants convicted on or after that date.

HOUSE BILL 690

Short Title:	Supervise RE Closings/Settlement Funds.	(Public)
Sponsors:	Representatives Stevens, Jordan, and T. Moore (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT RESIDENTIAL REAL ESTATE CLOSINGS AND SETTLEMENTS UNDER THE GOOD FUNDS SETTLEMENT ACT BE SUPERVISED BY ATTORNEYS LICENSED IN THIS STATE, TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND, AND TO PROVIDE A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding the following new sections to read:

"**§ 45A-9. Real estate closings and settlements to be supervised and conducted by attorneys licensed in this State.**

(a) Except as provided in subsection (b) of this section, closings and settlements shall be supervised and conducted by an attorney licensed under Chapter 84 of the General Statutes in accordance with this Chapter.

(b) Notwithstanding subsection (a) of this section, a nonattorney employee of a corporation selling real property owned by the corporation in a seller-financed real estate transaction may prepare purchase money loan documents to secure the indebtedness of the purchaser incurred for the purchase of real estate owned by the seller corporation.

(c) An attorney who performs a closing or settlement under this Chapter shall have in force and maintain professional malpractice insurance coverage with an insurance company licensed to sell insurance in this State with policy limits of no less than five hundred thousand dollars ($500,000) per incident and one million dollars ($1,000,000) aggregate. An attorney conducting a closing or settlement under this Chapter shall provide proof of insurance coverage required under this subsection in accordance with rules adopted by the North Carolina State Bar. The North Carolina State Bar shall make available to the public a listing of all attorneys who have complied with the provisions of this subsection, including the amounts of liability coverage and the company providing the coverage for each attorney.

(d) The North Carolina State Bar shall adopt rules for compliance with the requirements of subsection (c) of this section.

"**§ 45A-10. Interest on settlement agent real estate trust and escrow accounts.**

(a) A settlement agent who maintains a trust or escrow account for purposes of receiving and disbursing closing funds and loan funds shall pay any interest earned on funds

held in those accounts to the North Carolina State Bar to be used for the purposes authorized by the North Carolina State Bar under the Interest on Lawyers Trust Account Program.

(b) The North Carolina State Bar shall adopt rules for the collection and disbursement of funds required to be paid to the North Carolina State Bar under subsection (a) of this section."

SECTION 2. G.S. 84-8 reads as rewritten:

"**§ 84-8. Punishment for ~~violations; legal clinics of law schools and certain law students and lawyers excepted.~~violations.**

(a) ~~Any~~ Except as provided in subsection (b) of this section, any person, corporation, or association of persons violating the provisions of G.S. 84-4 ~~to G.S. 84-7~~through G.S. 84-6 shall be guilty of a ~~Class 1 misdemeanor.~~Class I felony.

(b) Any person who is in violation of the provisions of G.S. 84-4 through G.S. 84-6 due solely to the person's license being inactive as a result of the person's failure to timely pay annual State Bar dues as required or the failure to comply with the continuing legal education requirements established by the North Carolina State Bar under this Chapter, shall be guilty of a Class 1 misdemeanor. The failure to timely pay annual State Bar dues as required or the failure to comply with the continuing legal education requirements established by the North Carolina State Bar under this Chapter shall not constitute an offense under this section.

(c) No person shall be entitled to collect any fee for services performed in violation of G.S. 84-4 through G.S. 84-6.

~~The provisions of G.S. 84-4 to G.S. 84-7 shall not apply to the following:~~

~~(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.~~

~~(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.~~

~~(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state.~~"

SECTION 3. Article 1 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.**

The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.

(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.

(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state."

SECTION 4. Article 1 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-10.1. Private cause of action for the unauthorized practice of law.**

If any person violates any of the provisions of G.S. 84-4 through G.S. 84-6, or fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in G.S. 84-37(a), then in addition to any and all other liability imposed pursuant to this Chapter, any person who is damaged shall be entitled to maintain a cause of action to recover treble damages and reasonable attorneys' fees."

SECTION 5. G.S. 84-21 reads as rewritten:

"**§ 84-21. Organization of Council; publication of rules, regulations and bylaws.**

(a) The Council shall adopt the rules pursuant to G.S. 45A-9 and G.S. 45A-10.

(b) The rules and regulations adopted by the Council under this Article may be amended by the Council from time to time in any manner not inconsistent with this Article. Copies of all rules and regulations and of all amendments adopted by the Council shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North Carolina Supreme Court upon its minutes, and published in the next ensuing number of the North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."

SECTION 6. Sections 1 and 5 of this act become effective January 1, 2012. Sections 2 and 3 of this act become effective December 1, 2011, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2011.

HOUSE BILL 795

Short Title:	Patient Access to Pathological Materials.	(Public)
Sponsors:	Representatives Steen, Murry, and McComas (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES TO RELEASE PATHOLOGICAL MATERIALS AND RECORDS TO PATIENTS OR THEIR DESIGNATED REPRESENTATIVES, UPON WRITTEN REQUEST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 29 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-411.1. Pathological materials and related medical records.**

Upon receipt of a written and signed authorization by a patient or the patient's representative, a health care provider or health care facility licensed under the laws of this State shall furnish to the patient or to the patient's designated representative pathological materials collected from the patient along with complete copies of any medical records in the provider's or facility's possession that pertain to the pathological materials collected from the patient. A health care provider or health care facility shall furnish pathological materials and related medical records requested under this section within 30 days of the request and may charge a reasonable fee to cover the costs incurred in furnishing the pathological materials and related medical records to the patient or the patient's designated representative. As used in this section, "pathological materials" includes the patient's cytological materials, bodily fluids, tissues, organs, medical waste, paraffin blocks, and pathology slides."

SECTION 2. This act becomes effective October 1, 2011, and applies to requests for pathological materials and related medical records made on and after that date.

HOUSE BILL 772
Corrected Copy 4/11/11

Short Title:	SORNA Compliance.	(Public)
Sponsors:	Committee on Judiciary (Primary Sponsor) For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO COMPLY WITH THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT.

The General Assembly of North Carolina enacts:

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

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

~~(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.~~

(1b) "County registry" means the information compiled by the sheriff of a county in compliance with this Article.

(1c) "Division" means the Division of Criminal Information of the Department of Justice.

(1d) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person.

(1e) "Employed" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(1f) "Entity" means a business or organization that provides Internet service, electronic communications service, remote computing service, online service, electronic mail service, or electronic instant message or chat services whether the business or organization is within or outside the State.

(1g) "Final conviction" means either of the following by any federal (including a court martial), State, territorial, tribal, or foreign court:

a. Any conviction, adjudication, or other judicial determination that has subjected the offender to possible penal consequences. This does not include juveniles adjudicated delinquent in this State, or judicial determinations involving juveniles from other jurisdictions.

b. Any judicial determination involving a juvenile in another jurisdiction if that jurisdiction would require the juvenile to register on a public registry if the juvenile resided in that jurisdiction.

c. Any juvenile adjudication of delinquency in this State, or any judicial determination involving a juvenile in another jurisdiction, if the juvenile was at least 14 years of age at the time of the offense and the adjudication was for a violation of G.S. 14-27.2 (first-degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first-degree sex offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), for an attempt or conspiracy to commit any of those offenses, or for a violation of, or attempt or conspiracy to commit, any offense in another jurisdiction which is substantially similar to any of those offenses.

Convictions from foreign countries are included unless the U.S. State Department has concluded an independent judiciary did not generally enforce the right to a fair trial in that country during the year in which the conviction occurred.

~~(1g)~~(1h) "Instant Message" means a form of real-time text communication between two or more people. The communication is conveyed via computers connected over a network such as the Internet.

~~(1h)~~(1i) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

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

~~(1j)~~(1k) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

~~(1k)~~(1l) "Nonresident student" means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a part-time or full-time basis.

~~(1l)~~(1m) "Nonresident worker" means a person who is not a resident of North Carolina but who has employment or carries on a vocation in the State, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

~~(1m)~~(1n) "Offense against a minor" means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

~~(1n)~~(1o) "Online identifier" means electronic mail address, instant message screen name, user ID, chat or other Internet communication name, but it does not mean social security number, date of birth, or pin number.

(2) "Penal institution" means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) "Recidivist" means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) "Release" means discharged or paroled.

(3a) "Residence address" means the location of the person's home or other place where the person habitually lives, or a general description of the location of the place the person habitually lives, if that location has no fixed address.

(4) "Reportable conviction" means:

a. A final conviction for ~~an offense against a minor, a sexually violent offense, or~~ a tier I offense, a tier II offense, or a tier III offense. ~~an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.~~

b. A final conviction in another ~~state~~ jurisdiction of an offense, which if committed in this State, is substantially similar to ~~an offense against a minor or a sexually violent offense~~a tier I offense, a tier II offense, or a tier III offense as defined by this section, or a final conviction in another ~~state~~ jurisdiction of an offense that requires registration under the sex offender registration statutes of that ~~state.~~jurisdiction.

~~c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.~~

~~d. A final conviction for a violation of G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction for a violation of G.S. 14-202(a), (a1), or (c), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.~~

~~(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.2A (rape of a child; adult offender), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.4A (sex offense with a child; adult offender), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude),~~

~~G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), G.S. 14-202.3 (Solicitation of child by computer or certain other electronic devices to commit an unlawful sex act), G.S. 14-202.4(a) (taking indecent liberties with a student), G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile), or G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.~~

(6) "Sexually violent predator" means a person who has been convicted of a ~~sexually violent offense~~tier I offense, a tier II offense, or a tier III offense that is not an offense against a minor and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) "Sheriff" means the sheriff of a county in this State.

(8) "Statewide registry" means the central registry compiled by the Division in accordance with G.S. 14-208.14.

(9) "Student" means a person who is enrolled on a full-time or part-time basis, in (i) any public or nonpublic school, or (ii) any postsecondary public or private educational institution, including any trade or professional institution, or other institution of higher education.

(10) "Temporary lodging" means a place where a person abides or lodges for seven or more days that is a location other than the person's reported residence address.

(11) "Tier I offense" means a violation of any of the following:

a. G.S. 14-27.5A (sexual battery).

b. G.S. 14-43.13 (subjection or maintaining a person for sexual servitude) where the facts of the case show the victim was not a minor at the time of the offense.

c. G.S. 14-178 (incest between near relatives) where the facts of the case show the victim was not a minor at the time of the offense.

d. G.S. 14-190.9(a1) (felonious indecent exposure).

e. G.S. 14-190.17A (third degree sexual exploitation of a minor).

f. G.S. 14-202(d), (e), (f), (g), or (h), or a second or subsequent violation of G.S. 14-202(a), (a1), or (c) (secretly peeping into room occupied by another person), only if the court sentencing the individual issues an order pursuant to G.S. 14-202(l) requiring the individual to register.

g. G.S. 14-202.1 (taking indecent liberties with children) when there is no sexual contact.

h. G.S. 14-202.1 (taking indecent liberties with children) when there is sexual contact, but only if the court sentencing the individual finds that the victim was at least 13 years old, the offender was no more

than eight years older than the victim, no force was used in the commission of the offense, and it is appropriate for the offense to be classified as a tier I offense.

The term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(12) "Tier II offense" means a violation of any of the following:

a. G.S. 14-27.7 (intercourse and sexual offense with certain victims) where the facts of the case show the victim was at least 13 years old at the time of the offense.

b. G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old).

c. G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude) where the facts of the case show the victim was at least 13 but less than 18 years old at the time of the offense.

d. G.S. 14-178 (incest between near relatives) where the facts of the case show the victim was at least 13 but less than 18 years old at the time of the offense.

e. G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency).

f. G.S. 14-190.16 (first-degree sexual exploitation of a minor).

g. G.S. 14-190.17 (second degree sexual exploitation of a minor).

h. G.S. 14-190.18 (promoting prostitution of a minor).

i. G.S. 14-190.19 (participating in the prostitution of a minor).

j. G.S. 14-202.1 (taking indecent liberties with children) where the facts of the case show the victim was at least 13 but less than 16 years old at the time of the offense and there was sexual contact with the victim.

k. G.S. 14-202.3 (solicitation of child by computer to commit an unlawful sex act).

l. G.S. 14-318.4(a1) (parent or caretaker commit or permit act of prostitution with or by a juvenile).

m. G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian) where the facts of the case show the victim was at least 13 but less than 18 years old at the time of the offense.

The term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(13) "Tier III offense" means a violation of any of the following:

a. An offense against a minor.

b. G.S. 14-27.2 (first-degree rape).

c. G.S. 14-27.2A (rape of a child; adult offender).

d. G.S. 14-27.3 (second degree rape).

e. G.S. 14-27.4 (first-degree sexual offense).

f. G.S. 14-27.4A (sex offense with a child; adult offender).

g. G.S. 14-27.5 (second degree sexual offense).

h. G.S. 14-27.6 (attempted rape or sexual offense).

i. G.S. 14-27.7 (intercourse and sexual offense with certain victims) where the facts of the case show the victim was under the age of 13 at the time of the offense.

j. G.S. 14-43.13 (subjecting or maintaining a person for sexual servitude) where the facts of the case show the victim was under the age of 13 at the time of the offense.
k. G.S. 14-178 (incest between near relatives) where the facts of the case show the victim was under the age of 13 at the time of the offense.
l. G.S. 14-202.1 (taking indecent liberties with children) where the facts of the case show the victim was under the age of 13 at the time of the offense and there was sexual contact with the victim.
m. G.S. 14-318.4(a2) (commission or allowing of sexual act upon a juvenile by parent or guardian) where the facts of the case show the victim was under the age of 13 at the time of the offense.

The term also includes the following: an attempt, solicitation, or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(14) "Tier I registrant" means any person with a reportable conviction for a Tier I offense.

(15) "Tier II registrant" means any person who:
a. Has a reportable conviction for a tier II offense; or
b. Has a reportable conviction for a tier I offense and has a previous reportable conviction for a tier I offense.

(16) "Tier III registrant" means any person who:
a. Has a reportable conviction for a tier III offense;
b. Has a reportable conviction for a tier I or tier II offense and has a previous reportable conviction for a tier II offense; or
c. Has a reportable conviction for a tier I or tier II offense and has previously been required to register in accordance with Part 2A of this Article."

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

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

It is the objective of the General Assembly to establish a 30-year registration requirement for persons convicted of ~~certain offenses against minors or sexually violent offenses~~tier I offenses with an opportunity for those persons to petition in superior court to shorten their registration time period after 10 years of registration. It is also the objective of the General Assembly to establish a mandatory 30-year registration requirement for persons convicted of tier II offenses and certain recidivists. It is the further objective of the General Assembly to establish a ~~more stringent set of registration requirements for recidivists, persons who commit aggravated offenses,~~lifetime registration requirement for a person convicted of tier III offenses, certain recidivists, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

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

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal

institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 3. G.S. 14-208.6B reads as rewritten:

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

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

SECTION 4. The title of Part 2 of Article 27A of Chapter 14 of the General Statutes reads as rewritten:

"Part 2. Tier I Sex Offender and Public Protection Registration Program."

SECTION 5. G.S. 14-208.7 reads as rewritten:

"**§ 14-208.7. Registration.**

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

(1) ~~Within three business days of~~Prior to release from a ~~penal institution or arrival in a county to live outside a~~ penal institution; or

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

Registration shall be maintained for a period of at least 30 years following the date of initial county registration unless the person, after 10 years of registration, successfully petitions the superior court to shorten his or her registration time period under G.S. 14-208.12A.

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under ~~subsection (b)~~subsections (b) and (b1) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(a2) Any person who has been convicted of a reportable conviction prior to July 1, 2011, shall be required to register for that conviction pursuant to this Article if any of the following apply:

(1) On July 1, 2011, the person is required to register for another offense pursuant to this Article.

(2) On July 1, 2011, the person is serving an active term of imprisonment for any criminal offense.

(3) On July 1, 2011, the person is on probation, parole, or post-release supervision for any criminal offense.

(4) On or after July 1, 2011, the person is convicted of any felony offense.

A person required to register pursuant to subdivision (1) or (3) of this subsection shall register for the prior reportable conviction on or before July 6, 2011. A person required to register pursuant to subdivision (2) or (4) of this subsection shall register as provided in subsection (a) of this section.

Notwithstanding the provisions of this subsection, if (i) the conviction of a reportable conviction prior to July 1, 2011, was for a tier I or tier II offense, (ii) the conviction occurred 30 years or more prior to the date the person is required to register pursuant to this subsection, and

(iii) the person has no other reportable convictions requiring registration under this Article, the person shall not be required to register pursuant to this subsection.

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

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, tattoos, birthmarks, scars, or other identifying marks, drivers license ~~number,~~number and a photocopy of the drivers license, social security number, any telephone numbers, including mobile phone numbers, and ~~home~~ residence address.

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

(3) A current photograph taken by the sheriff, without charge, at the time of registration.

(4) The person's fingerprints and palm prints taken by the sheriff, without charge, at the time of registration.

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

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

(7) Any online identifier that the person uses or intends to use.

(8) Copies of or information on the person's passport or immigration documents, if any.

(9) Any professional licenses the person may hold authorizing the person to engage in an occupation or carry out a trade or business.

(10) A description of any motor vehicle, moped, aircraft, or watercraft the person owns or regularly operates for personal or employment use, including any license plate, registration, or other identification number and information on where the motor vehicle, moped, aircraft, or watercraft is regularly parked, docked, or otherwise located.

(b1) In addition to the information required by subsection (b) of this section, the sheriff with whom the person registers shall obtain a sample of the person's DNA, if a sample has not already been obtained and stored in the State DNA Database.

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

(d) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section. The sheriff shall provide the registrant with a written explanation of the duty to register under this Article, and shall require the registrant to sign a written acknowledgment that the explanation has been provided and that the registrant understands the registration requirement. The sheriff shall provide the registrant with written proof of registration at the time of registration."

SECTION 6. G.S. 14-208.8 reads as rewritten:

"**§ 14-208.8. Prerelease notification.**

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall do all of the following:

(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed.

(2) Obtain the registration information required under ~~G.S. 14-208.7(b)(1), (2), (5), (6), and (7),~~G.S. 14-208.7 as well as the address where the person expects to reside upon the person's release.

(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section."

SECTION 7. Part 2 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.8B. Notification requirement for temporary lodging or international travel.**

(a) A person required to register under this Article shall notify the sheriff of the county with whom the person is registered of any temporary lodging, including hotel, motel, or other transient lodging. The notice shall be provided within 72 hours after the person knows or should know that he or she will be maintaining temporary lodging and shall include information on the period of time the person will be residing in the temporary lodging.

(b) A person required to register under this Article shall notify the sheriff of the county with whom the person is registered of any intent to leave the United States 21 days or more prior to leaving the United States.

(c) Upon receiving the notice required under subsection (a) or (b) of this section, the sheriff shall immediately forward the information to the Division. If the notice is of temporary lodging, pursuant to subsection (a) of this section, the Division shall notify the sheriff of the county where the person is maintaining temporary lodging. If the notice is of the intent to leave the United States, pursuant to subsection (b) of this section, the Division shall notify all other jurisdictions in which the person is required to register as a sex offender, shall notify the United States Marshals Service, and shall update the person's registration information in the national sex offender database."

SECTION 8. G.S. 14-208.10 reads as rewritten:

"**§ 14-208.10. Registration information is public record; access to registration information.**

(a) The following information regarding a person required to register under this Article is public record and shall be available for public inspection: name, sex, temporary lodging address, residence address, vehicle description and license plate, registration, or identification number, physical description, picture, conviction ~~date, offense~~dates, all offenses for which registration was required, the sentence imposed as a result of ~~the conviction,~~each conviction, and registration status. The information obtained under G.S. 14-208.22 regarding a person's medical records or documentation of treatment for the person's mental abnormality or personality disorder shall not be a part of the public record.

The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain a copy of an individual's registration form, a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff. However, the identity of the victim of an offense that requires registration under this ~~Article~~ Article, the registrant's social security number, the registrant's passport or immigration document numbers, and any information on any arrests of the registrant not resulting in conviction, shall not be released. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate."

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

"Part 2A. Tier II Sex Offender and Public Protection Registration Program.

"**§ 14-208.19B. Mandatory 30-year registration procedure; application of Part 2 of this Article.**

Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a tier II registrant. The procedure for registering as a tier II registrant is the same as under Part 2 of this Article.

"**§ 14-208.19C. Length of registration.**

A tier II registrant shall maintain registration for a period of at least 30 years following the date of initial county registration. Except as provided under G.S. 14-208.6C, the requirement of registration shall not be terminated prior to the completion of the registration period."

SECTION 10. The title of Part 3 of Article 27A of Chapter 14 of the General Statutes reads as rewritten:

"Part 3. Tier III Sex Offender and Sexually Violent Predator Registration Program."

SECTION 11. G.S. 14-208.20(a) reads as rewritten:

"(a) When a person is charged by indictment or information with the commission of a ~~sexually violent offense,~~tier I offense, a tier II offense, or a tier III offense that is not an offense against a minor, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders."

SECTION 12. G.S. 14-208.21 reads as rewritten:

"**§ 14-208.21. Lifetime registration procedure; application of Part 2 of this Article.**

Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a tier III registrant or a person classified as a sexually violent ~~predator, a person who is a recidivist, or a person who is convicted of an aggravated offense.~~predator. The procedure for registering as a tier III registrant or a sexually violent ~~predator, a recidivist, or a person convicted of an aggravated offense~~predator is the same as under Part 2 of this Article."

SECTION 13. G.S. 14-208.22(a) reads as rewritten:

"(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is a ~~recidivist, who is convicted of an aggravated offense,~~tier III registrant or who is classified as a sexually violent predator:

~~(1) Identifying factors.~~

~~(2) Offense history.~~

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder."

SECTION 14. G.S. 14-208.23 reads as rewritten:

"**§ 14-208.23. Length of registration.**

A ~~person who is a recidivist, who is convicted of an aggravated offense,~~tier III registrant or a person who is classified as a sexually violent predator shall maintain registration for the

person's life. Except as provided under ~~G.S. 14-208.6C,~~G.S. 14-208.6C or G.S. 14-208.23A, the requirement of registration shall not be terminated."

SECTION 15. Part 3 of Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.23A. Request for termination of registration requirement for juveniles.**

(a) Thirty years from the date of initial county registration, a person required to register under this Part based on a final conviction as defined in sub-subdivision b. or c. of G.S. 14-208.6(1g) may petition the superior court in the district where the person resides to terminate the lifetime registration requirement if the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) The court may grant the relief if:

(1) The petitioner demonstrates to the court that he or she has not been arrested for any crime that would require registration under this Article since completing the sentence,

(2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State, and

(3) The court is otherwise satisfied that the petitioner is not a current or potential threat to public safety.

(c) The district attorney in the district in which the petition is filed shall be given notice of the petition at least three weeks before the hearing on the matter. The petitioner may present evidence in support of the petition, and the district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied.

(d) If the court denies the petition, the person may again petition the court for relief in accordance with this section one year from the date of the denial of the original petition to terminate the registration requirement. If the court grants the petition to terminate the registration requirement, the clerk of court shall forward a certified copy of the order to the Division to have the person's name removed from the registry."

SECTION 16. G.S. 14-208.26(a) reads as rewritten:

"(a) When a juvenile is adjudicated delinquent for a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age but less than fourteen years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part."

SECTION 17. G.S. 14-208.40(a) reads as rewritten:

"(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern

the program. The program shall be designed to monitor three categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of ~~an aggravated offense~~a tier III offense other than an offense against a minor as those terms are defined in G.S. 14-208.6.

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) based on the Department's risk assessment program requires the highest possible level of supervision and monitoring.

(3) Any offender who is convicted of G.S. 14-27.2A or G.S. 14-27.4A, who shall be enrolled in the satellite-based monitoring program for the offender's natural life upon termination of the offender's active punishment."

SECTION 18. G.S. 14-208.40A reads as rewritten:

"**§ 14-208.40A. Determination of satellite-based monitoring requirement by court.**

(a) When an offender is convicted of a reportable conviction as defined by G.S. 14-208.6(4), during the sentencing phase, the district attorney shall present to the court any evidence that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was ~~an aggravated offense,~~ a tier III offense other than an offense against a minor, (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor. The district attorney shall have no discretion to withhold any evidence required to be submitted to the court pursuant to this subsection.

The offender shall be allowed to present to the court any evidence that the district attorney's evidence is not correct.

(b) After receipt of the evidence from the parties, the court shall determine whether the offender's conviction places the offender in one of the categories described in G.S. 14-208.40(a), and if so, shall make a finding of fact of that determination, specifying whether (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was ~~an aggravated offense,~~a tier III offense other than an offense against a minor, (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, or (v) the offense involved the physical, mental, or sexual abuse of a minor.

(c) If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed ~~an aggravated offense,~~a tier III offense other than an offense against a minor, or was convicted of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in a satellite-based monitoring program for life.

(d) If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not ~~an aggravated offense~~a tier III offense other than an offense against a minor or a violation of G.S. 14-27.2A or G.S. 14-27.4A and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court.

(e) Upon receipt of a risk assessment from the Department pursuant to subsection (d) of this section, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and

monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 19. G.S. 14-208.40B(c) reads as rewritten:

"(c) At the hearing, the court shall determine if the offender falls into one of the categories described in G.S. 14-208.40(a). The court shall hold the hearing and make findings of fact pursuant to G.S. 14-208.40A.

If the court finds that (i) the offender has been classified as a sexually violent predator pursuant to G.S. 14-208.20, (ii) the offender is a recidivist, (iii) the conviction offense was ~~an aggravated offense,~~ a tier III offense other than an offense against a minor, or (iv) the conviction offense was a violation of G.S. 14-27.2A or G.S. 14-27.4A, the court shall order the offender to enroll in satellite-based monitoring for life.

If the court finds that the offender committed an offense that involved the physical, mental, or sexual abuse of a minor, that the offense is not ~~an aggravated offense~~a tier III offense other than an offense against a minor or a violation of G.S. 14-27.2A or G.S. 14-27.4A, and the offender is not a recidivist, the court shall order that the Department do a risk assessment of the offender. The Department shall have a minimum of 30 days, but not more than 60 days, to complete the risk assessment of the offender and report the results to the court. The Department may use a risk assessment of the offender done within six months of the date of the hearing.

Upon receipt of a risk assessment from the Department, the court shall determine whether, based on the Department's risk assessment, the offender requires the highest possible level of supervision and monitoring. If the court determines that the offender does require the highest possible level of supervision and monitoring, the court shall order the offender to enroll in a satellite-based monitoring program for a period of time to be specified by the court."

SECTION 20. G.S. 14-208.43(d1) reads as rewritten:

"(d1) Notwithstanding the provisions of this section, if the Commission is notified by the Department of Correction that the offender has been released, pursuant to ~~G.S. 14-208.12A,~~G.S. 14-208.12A or G.S. 14-208.23A, from the requirement to register under Part 2 or Part 3 of Article 27A of this Chapter, upon request of the offender, the Commission shall order the termination of the monitoring requirement."

SECTION 21. G.S. 50-13.1(a1) reads as rewritten:

"(a1) Notwithstanding any other provision of law, any person instituting an action or proceeding for custody ex parte who has been convicted of a ~~sexually violent offense as defined in G.S. 14-208.6(5)~~ reportable conviction as defined in G.S. 14-208.6(4) shall disclose the conviction in the pleadings."

SECTION 22. Section 21 of this act becomes effective July 1, 2011. The remainder of this act becomes effective July 1, 2011, and applies to persons who are required to be registered pursuant to Article 27A of Chapter 14 of the General Statutes on or after that date.

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, May 11, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, May 11, 2011, at 10:05 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Rhyne presided and called the meeting to order. Rep. Rhyne recognized the pages.

The following bills were considered:

HB 271, Probation Officer/No Concealed Carry Required (Representatives Guice, Horn, Ingle, and Faircloth, Jr., Primary Sponsors). Chair Rhyne recognized Rep. Guice to speak on the bill. Discussion of the bill. Rep. Moore was recognized by Chair Rhyne for a motion of a favorable report. With the majority being in favor, the motion carried.

HB 408, Amend Criminal Discovery Laws (Representatives Moore, Spear, and Shepard, Primary Sponsors). Chair Rhyne recognized Rep. Moore to explain the bill. Chair Rhyne accepted a motion from Rep. Dixon to place the Proposed Committee Substitute before the committee. Rep. Moore recognized several from the public: Locke Bell, Jeff Hunt, Rick Shaffer, and Dick Taylor. Chair Rhyne recognized Brad Bannon, NCAOJ to speak. Chair Rhyne recognized Rep. Jones for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 706, Alimony/Postseparation Support Changes (Representative Rhyne, Jr., Primary Sponsor). Chair Rhyne stated no action would be taken today on this bill.

HB 795, Patient Access to Pathological Materials (Representatives Steen, II, Murry, and McComas, Primary Sponsors). Rep. Steen was recognized by Chair Rhyne to speak on the bill. Chair Rhyne accepted a motion from Rep. Moore to place the Proposed Committee Substitute before the committee. Discussion of the bill. Chair Rhyne recognized Rep. Moore for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

The meeting adjourned at 10:20 a.m.

Respectfully submitted,

Rep. Johnathan Rhyne, Jr.
Chair

Nancy Garriss
Committee Clerk

AMENDED Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, May 11, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: House Bill 631 removed.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 408	Amend Criminal Discovery Laws.	Representative Moore Representative Spear Representative Shepard
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 795	Patient Access to Pathological Materials.	Representative Steen, II Representative Murry Representative McComas

Respectfully,
Representative Tim Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **12 PM** o'clock on **May 10, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, May 11, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: House Bill 795 added.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 408	Amend Criminal Discovery Laws.	Representative Moore Representative Spear Representative Shepard
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.
HB 795	Patient Access to Pathological Materials.	Representative Steen, II Representative Murry Representative McComas

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **May 10, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, May 11, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 271	Probation Officer/No Concealed Carry Required.	Representative Guice Representative Horn Representative Ingle Representative Faircloth, Jr.
HB 408	Amend Criminal Discovery Laws.	Representative Moore Representative Spear Representative Shepard
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.

Respectfully,
Representative Tim Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10 AM** o'clock on **May 09, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 271 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT THE PROHIBITION AGAINST CARRYING A CONCEALED WEAPON DOES NOT APPLY TO STATE PROBATION AND PAROLE CERTIFIED OFFICERS WHEN THEY ARE OFF-DUTY.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 408 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAW REGARDING DISCOVERY IN CRIMINAL CASES.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 795 A BILL TO BE ENTITLED AN ACT TO REQUIRE HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES TO RELEASE PATHOLOGICAL MATERIALS AND RECORDS TO PATIENTS OR THEIR DESIGNATED REPRESENTATIVES, UPON WRITTEN REQUEST.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

HOUSE BILL 271

Short Title:	Probation Officer/No Concealed Carry Required.	(Public)
Sponsors:	Representatives Guice, Horn, Ingle, and Faircloth (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE PROHIBITION AGAINST CARRYING A CONCEALED WEAPON DOES NOT APPLY TO STATE PROBATION AND PAROLE CERTIFIED OFFICERS WHEN THEY ARE OFF-DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269(b) is amended by adding a new subdivision to read:

"(6) State probation or parole certified officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 2. This act becomes effective December 1, 2011.

HOUSE BILL 271:
Probation Officer/No Concealed Carry Required

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 10, 2011
Introduced by:	Reps. Guice, Horn, Ingle, Faircloth	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 271 would allow all certified State probation officers and parole officers to carry a concealed weapon while off-duty, similar to sworn law enforcement officers.

CURRENT LAW: G.S. 14-269 makes it unlawful for any individual to willfully and intentionally carry concealed about their person any of the following:

- Bowie knife
- Dirk
- Dagger
- Slung shot
- Loaded cane
- Metallic knuckles
- Razor
- Shurikin
- Stun gun
- Other deadly weapon

It is also unlawful to carry concealed a pistol or gun, unless it is on the individual's property, the individual has a concealed carry permit, or is a military permittee. Violation is a misdemeanor. The prohibition does not apply to ordinary pocket knives.

The prohibitions above do not apply to any of the following individuals:

1. Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties and acting under orders requiring them to carry arms and weapons.
2. Civil and law enforcement officers of the United States.
3. Officers and soldiers of the militia and the National Guard when called into actual service.
4. Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties.
5. Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

For the individuals listed above that are exempt from the prohibitions, those individuals are also exempt from the following statutory provisions:

- **G.S. 14-269.2.** Weapons on campus or other education property.
- **G.S. 14-269.3.** Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed.
- **G.S. 14-269.4.** Weapons on State property and courthouses.
- **G.S. 14-277.2.** Weapons at parades, etc.

- **G.S. 14-288.7.** Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.
- **G.S. 14-288.8.** Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions.
- **G.S. 14-288.21.** Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; punishment.

BILL ANALYSIS: The bill would allow a State probation or parole certified officer to carry a concealed weapon when off-duty without having a concealed carry permit, provided the officer is not consuming, or have remaining in the officer's body, alcohol or an unlawful controlled substance.

EFFECTIVE DATE: December 1, 2011.

Erika Churchill, staff attorney, substantially contributed to this summary.

H271-SMRC-28(e1) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 408
PROPOSED COMMITTEE SUBSTITUTE H408-PCS30331-TJ-14

Short Title: Amend Criminal Discovery Laws. (Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN NORTH CAROLINA'S OPEN-FILE DISCOVERY LAW, PROTECT CRIME STOPPERS INFORMANTS, PROTECT VICTIM INFORMATION, REQUIRE LAW ENFORCEMENT AND INVESTIGATORY AGENCIES TO MAKE TIMELY DISCLOSURE OF THEIR FILES TO PROSECUTORS, AND AVOID FRIVOLOUS CLAIMS OF PROFESSIONAL MISCONDUCT AGAINST PROSECUTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

(a) Upon motion of the defendant, the court must ~~order the State to:~~ order:

(1) The State to make ~~Make~~ available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and ~~prosecutorial agencies~~ prosecutor's offices involved in the investigation of the crimes committed or the prosecution of the defendant.

a. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. When any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including preliminary test or screening results and bench notes.

b. The term ~~"prosecutorial agency"~~ "prosecutor's office" refers to the office of the prosecuting attorney.

c. The term "investigatory agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or ~~prosecutor~~ prosecutor's office in connection with the investigation of the crimes committed or the prosecution of the defendant.

d. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is

significantly new or different information in the oral statement from a prior statement made by the witness.

e. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) The prosecuting attorney to give ~~Give~~ notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court. Standardized fee scales shall be developed by the Administrative Office of the Courts and Indigent Defense Services for all expert witnesses and private investigators who are compensated with State funds.

(3) The prosecuting attorney to give~~Give~~ the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the ~~State~~ prosecuting attorney certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) ~~Upon request by the State, a~~ On a timely basis, law enforcement ~~or prosecutorial~~ and investigatory agencies ~~agency~~ shall make available to the ~~State~~ prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a). Investigatory agencies that obtain information and materials listed in subdivision (1) of subsection (a) of this section shall ensure that such information and materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the defendant.

(d) Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1 misdemeanor."

SECTION 2. G.S. 15A-904 reads as rewritten:

"§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.

(a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the

prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(a2) The State is not required to provide any personal identifying information of a witness beyond that witness's name, address, date of birth, and published phone number, unless the court determines upon motion of the defendant that such additional information is necessary to accurately identify and locate the witness.

(a3) The State is not required to disclose the identity of any individual providing information about a crime or criminal conduct to a Crime Stoppers organization under promise or assurance of anonymity unless ordered by the court. For purposes of this Article, a Crime Stoppers organization or similarly named entity means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expands donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance between the news media, the community, and law enforcement officials.

(a4) The State is not required to disclose the Victim Impact Statement or its contents unless otherwise required by law. For purposes of this Chapter, a Victim Impact Statement is a document submitted by the victim or the victim's family to the State pursuant to the Victims' Rights Amendment.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements."

SECTION 3. G.S. 15A-905(c)(2) reads as rewritten:

"(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

...

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court. Standardized fee scales shall be developed by the Administrative Office of the Courts and Indigent Defense Services for all expert witnesses and private investigators who are compensated with State funds.

...."

SECTION 4. G.S. 15A-910 is amended by adding two new subsections to read:

"(c) For purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agencies' files, courts and State agencies shall presume that prosecuting attorneys and their staff have acted in good faith if they have made a reasonably diligent inquiry of those agencies under G.S. 15A-903(c) and disclosed the responsive materials.

(d) If the court imposes any sanction, it must make specific findings justifying the imposed sanction."

SECTION 5. This act becomes effective December 1, 2011, and applies to cases pending on that date and to cases filed on or after that date.

HOUSE BILL 408:
Amend Criminal Discovery Laws

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 10, 2011
Introduced by:	Reps. T. Moore, Spear, Shepard	**Prepared by:**	Janice Paul
Analysis of:	PCS to First Edition H408-CSTJ-14		Committee Counsel

SUMMARY: ***The PCS to House Bill 408 would amend the Criminal Procedure Act relating to discovery in Superior Court in order to strengthen the open-file discovery law, protect CrimeStoppers informants, protect victim information, require law enforcement and investigatory agencies to make timely disclosure of their files, and avoid frivolous claims of professional misconduct against prosecutors.***

BILL ANALYSIS:

Section 1. Currently, G.S. 15A-903(a)(1) requires the State to make available to the defendant the complete files of all law enforcement or prosecutorial agencies involved in the investigation or prosecution of the offenses. Section 1 of the PCS would change current law by deleting the term "prosecutorial agency" and creating definitions of "prosecutor's office" and "investigatory agency." On a motion of the defendant, the court would be required order the State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutor's offices involved in the investigation or prosecution of a case, including all preliminary and final test or examination results, underlying data, calculations, or writings. Any person who willfully omits or misrepresents the evidence or information subject to disclosure would be guilty of a Class H felony. The prosecuting attorney would be required to give notice to the defendant of the State's lay and expert witnesses. State-funded experts and private investigators would be compensated according to a fee scale to be developed by the Administrative Office of the Courts (AOC) and Indigent Defense Services (IDS).

The PCS would make it mandatory for law enforcement and investigatory agencies to "timely" provide the prosecutor's office with a complete copy of their investigative files. Any entity obtaining information required to be disclosed must ensure that the information is timely disclosed to the prosecutor's office for further required disclosure to the defendant. Willful failure to provide such evidence or information would be punishable as a Class 1 misdemeanor.

Section 2 defines a CrimeStoppers organization, and would provide that, unless court-ordered, the State is not required to divulge the identity of any person who has given information to CrimeStoppers under assurance of anonymity, nor to disclose information contained in the Victim Impact Statement.

Section 3 would direct AOC and IDS to develop standardized fee scales for payment of defense experts and private investigators compensated by the State.

Section 4 would add two new subsections providing a presumption of good faith by prosecutors and their staff if they made a reasonably diligent inquiry of law enforcement and investigatory agencies, and providing that a court must make specific findings to support the imposition of sanctions on any party for failing to comply with discovery procedures.

EFFECTIVE DATE: The act becomes effective December 1, 2011, and applies to cases pending or filed on or after that date.

H408-SMTJ-34(CSTJ-14) v1

HOUSE BILL 408

Short Title:	Amend Criminal Discovery Laws.	(Public)
Sponsors:	Representatives T. Moore, Spear, and Shepard (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903 reads as rewritten:

"**§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.**

(a) Upon motion of the defendant, the court must order the State to:

(1) Make available to the defendant the prosecutor's complete ~~files of all law enforcement and prosecutorial agencies involved in the~~ file involving the investigation of the crimes committed or the prosecution of the defendant. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. ~~The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant.~~ Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is material and significantly new or different information in the oral statement from a prior statement made by the witness. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court. Any representative of the State requesting investigatory assistance or expert witness services must file a

motion and notice of hearing on the defendant. All such requests must be made in court and in the presence of opposing counsel.

(3) Give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the State certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) Upon request by the State, a law enforcement ~~or prosecutorial~~ agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a)."

SECTION 2. G.S. 15A-904 reads as rewritten:

"**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

(a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(a2) The State is not required to provide any personal identifying information of a witness beyond that witness's name, address, date of birth, and published phone number, unless the court determines upon motion of the defendant that such additional information is necessary to accurately identify and locate the witness.

(a3) The State is not required to disclose the identity of any individual providing information about a crime or criminal conduct to a Crime Stoppers organization under promise or assurance of anonymity unless ordered by the court. For purposes of this Article, a Crime Stoppers organization or similarly named entity means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expands donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance between the news media, the community, and law enforcement officials.

(a4) The State is not required to disclose the Victim Impact Statement or its contents unless otherwise required by law. For purposes of this Chapter, a Victim Impact Statement is a document submitted by the victim or the victim's family to the State pursuant to the Victims' Rights Amendment.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements.

(d) If the State has undertaken to comply with this Article by making disclosure, the district attorney or other prosecuting attorney and the legal staff are presumed to be acting in good faith for the purposes of determinations made by the court or agency of the State."

SECTION 3. G.S. 15A-905(c)(2) reads as rewritten:

"(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the defendant to:

...

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court. Any defendant requesting investigatory assistance or expert witness services must file a motion and notice of hearing on the State. All such requests must be made in court and in the presence of opposing counsel.

...."

SECTION 4. G.S. 15A-910 is amended by adding a new subsection to read:

"(c) If the court imposes any sanction, it must make specific findings justifying the imposed sanction."

SECTION 5. This act becomes effective December 1, 2011, and applies to cases pending on that date and to cases filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 706

Short Title:	Alimony/Postseparation Support Changes.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or postseparation support pending at the time the judgment for divorce is ~~granted.~~granted, except as provided by G.S. 50-16.1A(4). Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony or postseparation support or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the judgment of absolute ~~divorce.~~divorce, except as provided by G.S. 50-16.1A(4)."

SECTION 2. G.S. 50-16.9 is amended by adding a new subsection to read:

"(a1) There is a rebuttable presumption that the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years is not an action in bad faith. Unless the presumption is rebutted, the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years constitutes a change of circumstances, and the court shall consider this change of circumstances when determining whether to modify an alimony or postseparation support order. This subsection applies to any order of alimony, alimony pendent lite, or postseparation support, including any order entered pursuant to a repealed statute."

SECTION 3. G.S. 52-10 is amended by adding a new subsection to read:

"(a1) Any contract between husband and wife, with or without valuable consideration, to waive and release all rights and obligations to postseparation support or alimony is valid and not inconsistent with public policy, if the contract is in writing and is acknowledged by both parties before a certifying officer, and such release may be pleaded in bar of any action or proceeding for the recovery of the rights so released."

SECTION 4. This act is effective October 1, 2011. Section 3 of this act applies to contracts entered into on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 795
PROPOSED COMMITTEE SUBSTITUTE H795-PCS11205-ST-23

Short Title: Patient Access to Pathological Materials. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH CARE PROVIDERS TO RELEASE PATHOLOGICAL MATERIALS AND RECORDS TO PATIENTS UPON WRITTEN REQUEST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 29 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-411.1. Pathological materials and related medical records.**

(a) Upon receipt of a written and notarized authorization from the patient, a health care provider shall furnish to the patient specified pathological materials collected from the patient and any medical records in the health care provider's possession that pertain to those pathological materials. A written request signed by the legal counsel of the patient need not be notarized.

(b) A health care provider shall furnish pathological materials and related medical records requested under this section within 30 days of receipt of the request and may charge a reasonable fee pursuant to G.S. 90-411.

(c) This section shall not apply to any pathological materials collected as evidence of a criminal offense or as evidence of paternity.

(d) As used in this section, the following terms shall mean:

(1) Patient. – The individual, the individual's legal counsel, the individual's attorney-in-fact, the individual's legal guardian, the personal representative of the estate of that individual or a person listed in G.S. 90-210.124(a)(2)a.-e., if the individual is deceased.

(2) Pathological materials. – The patient's cytological materials, bodily fluids, tissues, organs, medical waste, paraffin blocks, and pathology slides."

SECTION 2. This act becomes effective October 1, 2011, and applies to requests for pathological materials and related medical records made on and after that date.

HOUSE BILL 795:
Patient Access to Pathological Materials

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 10, 2011
Introduced by:	Reps. Steen, Murry, McComas	**Prepared by:**	Janice Paul
Analysis of:	PCS to First Edition H795-CSST-23		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 795 would allow a patient to request and receive that patient's pathological materials, and corresponding medical records, from any health care provider.***

BILL ANALYSIS:

The proposed committee substitute would add a new statutory provision requiring health care providers to furnish pathological materials and any medical records that pertain to those pathological materials to a patient. The patient would need to make the request in writing and it be notarized. "Patient" also includes the patient's legal counsel, legal guardian, power of attorney, or, if deceased, the personal representative of the estate or a specified heir[1] of the patient.

The health provider would have to provide the pathological materials and records within 30 days of the request, and may charge a reasonable fee to cover the costs incurred in searching, handling, copying and mailing.

Pathological materials include cytological materials, bodily fluids, tissues, organs, medical waste, paraffin blocks, and pathology slides.

A health care provider is any person licensed or certified to practice a health profession or occupation under Chapter 90 – Medicine and Allied Occupations, Chapter 90B – Social Worker Certification and Licensure Act, or Chapter 90C -NC Recreational Therapy Licensure Act; a health care facility licensed under Chapters 122C – Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985 or Chapter 131E – Health Care Facilities and Services; and the representative or agent of any of those. G.S. 90-410.

Exempt from the provisions would be pathological materials collected as evidence of a criminal offense or paternity.

EFFECTIVE DATE: October 1, 2011, and applies to requests for pathological materials and related medical records made on or after that date.

H795-SMTJ-32(CSST-23) v2

[1] The specified heirs are: the surviving spouse; a majority of the surviving children who are at least 18 years of age and can be located after reasonable efforts; the surviving parents; a majority of the surviving siblings who are at least 18 years of age and can be located after reasonable efforts; and 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.

HOUSE BILL 795

Short Title:	Patient Access to Pathological Materials.	(Public)
Sponsors:	Representatives Steen, Murry, and McComas (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES TO RELEASE PATHOLOGICAL MATERIALS AND RECORDS TO PATIENTS OR THEIR DESIGNATED REPRESENTATIVES, UPON WRITTEN REQUEST.

The General Assembly of North Carolina enacts:

SECTION 1. Article 29 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-411.1. Pathological materials and related medical records.**

Upon receipt of a written and signed authorization by a patient or the patient's representative, a health care provider or health care facility licensed under the laws of this State shall furnish to the patient or to the patient's designated representative pathological materials collected from the patient along with complete copies of any medical records in the provider's or facility's possession that pertain to the pathological materials collected from the patient. A health care provider or health care facility shall furnish pathological materials and related medical records requested under this section within 30 days of the request and may charge a reasonable fee to cover the costs incurred in furnishing the pathological materials and related medical records to the patient or the patient's designated representative. As used in this section, "pathological materials" includes the patient's cytological materials, bodily fluids, tissues, organs, medical waste, paraffin blocks, and pathology slides."

SECTION 2. This act becomes effective October 1, 2011, and applies to requests for pathological materials and related medical records made on and after that date.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — May 11, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nicole Sullivan	NC Dept of Correction
Tim Moore	DOC
Lad Rubert	CJPC
Kimberly N Overton	Conference of District Attorneys
Peg Dorer	Conference of DAs
Jeff Hunt	DA. 29B
Rick Shaffer	DA-27B
Mark Bibbs	Bibbs Law Office
Alan Miller	ICJ6
Susan Deans	
Sam Hamm	NCNA

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — May 11, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Taylor	ACLU
Brad Bannon	NCAJ
Thomas Maher	IDS
Todd Barlow	NCAJ
David Holm	NC Bar Assn.
Donald Hill	Polk County Sheriff

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, May 18, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, May 18, 2011 at 10:05 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Moore presided and called the meeting to order. Rep. Moore recognized the pages and sergeant-of-arms.

The following bills were considered:

HB 387, Access Confidential Info/Child Abuse/Neglect.-AB (Representatives Glazier, Stevens, and Parfitt, Primary Sponsors). Chair Moore recognized Rep. Glazier to speak on the bill. Discussion followed. Chair Moore recognized Rep. Cleveland for a motion of a favorable report. With the majority being in favor, the motion carried.

HB 690, Supervise RE Closings/Settlement Funds (Representatives Stevens, Jordan, and Moore, Primary Sponsors). Chair Moore accepted a motion from Rep. Dixon to place the Proposed Committee Substitute before the committee. Walker Reagan, staff, was recognized to explain the bill. Rep. Moore recognized Rep. Jordan to speak on the bill. Discussion by the members. Also recognized were Ben Koon (Real Estate Lawyers Association), and Paul Stock (Bankers Association). Rep. Dixon made a motion for a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 650, Amend Various Gun Laws (Representatives Hilton, LaRoque, Cleveland, and Hastings, Primary Sponsors). Chair Moore accepted a motion from Rep. Cleveland to place the Proposed Committee Substitute before the committee. Rep. Hilton was recognized by Chair Moore to speak on the bill. Kory Goldsmith, staff, was recognized to explain the bill. Discussion followed. Public recognized to speak: Anthony Roulette (NRA – National Rifle Association), Paul Valone (Grassroots NC), Eddie Caldwell (NC Sheriffs Association), Colleen Kochanek (NC Coalition Against Domestic Violence), Katherine Joyce (NC Association of School Administrators), Joe McClees (NC Firearms Dealers), Henri McClees (NC Sporting Dog Association), and Mike Mann (NC Rifle and Pistol Association). No vote was taken on the bill.

The meeting adjourned at 11:30 a.m.

Respectfully submitted,

Rep. Tim Moore
Chair

Nancy Garriss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, May 18, 2011
Room 415 LOB
10:00 a.m.

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 387	Access Confidential Info/Child Abuse/Neglect.-AB	Representative Glazier Representative Stevens Representative Parfitt
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, May 18, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 387	Access Confidential Info/Child Abuse/Neglect.-AB	Representative Glazier Representative Stevens Representative Parfitt
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings
HB 690	Supervise RE Closings/Settlement Funds.	Representative Stevens Representative Jordan Representative Moore

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **May 16, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 387 A BILL TO BE ENTITLED AN ACT CLARIFYING WHEN, TO WHOM, AND UNDER WHAT CIRCUMSTANCES THE IDENTITY OF A PERSON REPORTING CHILD ABUSE OR NEGLECT MAY BE RELEASED; AND CLARIFYING WHAT INFORMATION THE DIVISION OF SOCIAL SERVICES IS REQUIRED TO MAINTAIN IN THE FOSTER CARE REGISTRY AND UNDER WHAT CIRCUMSTANCES INFORMATION IN THE REGISTRY MAY BE WITHHELD.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 690 A BILL TO BE ENTITLED AN ACT TO REQUIRE THAT RESIDENTIAL REAL ESTATE CLOSINGS AND SETTLEMENTS UNDER THE GOOD FUNDS SETTLEMENT ACT BE SUPERVISED BY ATTORNEYS LICENSED IN THIS STATE, TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND, AND TO PROVIDE A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No.____) is placed on the Calendar of _____. (The original bill resolution No.____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

HOUSE BILL 387

Short Title:	Access Confidential Info/Child Abuse/Neglect.-AB	(Public)
Sponsors:	Representatives Glazier, Stevens, and Parfitt (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

March 17, 2011

A BILL TO BE ENTITLED

AN ACT CLARIFYING WHEN, TO WHOM, AND UNDER WHAT CIRCUMSTANCES THE IDENTITY OF A PERSON REPORTING CHILD ABUSE OR NEGLECT MAY BE RELEASED; AND CLARIFYING WHAT INFORMATION THE DIVISION OF SOCIAL SERVICES IS REQUIRED TO MAINTAIN IN THE FOSTER CARE REGISTRY AND UNDER WHAT CIRCUMSTANCES INFORMATION IN THE REGISTRY MAY BE WITHHELD.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a1) reads as rewritten:

"(a1) All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department, except ~~that:~~under the following circumstances:

(1) The department shall disclose confidential information to any federal, State, or local government entity or its agent in order to protect a juvenile from abuse or neglect. Any confidential information disclosed to any federal, State, or local government entity or its agent under this subsection shall remain confidential with the other government entity or its agent and shall only be redisclosed for purposes directly connected with carrying out that entity's mandated responsibilities.

(1a) The department shall disclose confidential information regarding the identity of the reporter to any federal, State, or local government entity or its agent with a court order. The department may only disclose confidential information regarding the identity of the reporter to a federal, State, or local government entity or its agent without a court order when the entity demonstrates a need for the reporter's name to carry out the entity's mandated responsibilities.

(2) The information may be examined upon request by the juvenile's guardian ad litem or the juvenile, including a juvenile who has reached age 18 or been emancipated.

(3) A district or superior court judge of this State presiding over a civil matter in which the department of social services is not a party may order the department to release confidential information, after providing the department with reasonable notice and an opportunity to be heard and then determining that the information is relevant and necessary to the trial of the matter before the court and unavailable from any other source. This

subdivision shall not be construed to relieve any court of its duty to conduct hearings and make findings required under relevant federal law, before ordering the release of any private medical or mental health information or records related to substance abuse or HIV status or treatment. The department of social services may surrender the requested records to the court, for in camera review, if the surrender is necessary to make the required determinations.

(4) A district or superior court judge of this State presiding over a criminal or delinquency matter shall conduct an in camera review prior to releasing to the defendant or juvenile any confidential records maintained by the department of social services, except those records the defendant or juvenile is entitled to pursuant to subdivision (2) of this subsection.

(5) The department may disclose confidential information to a parent, guardian, custodian, or caretaker in accordance with G.S. 7B-700 of this Subchapter."

SECTION 2. G.S. 131D-10.6C reads as rewritten:

"**§ 131D-10.6C. Maintaining a register of applicants by the Division of Social Services.**

(a) The Division of Social Services shall keep a register of all licensed family foster and therapeutic foster ~~home applicants.~~homes. The register shall contain the following information:

(1) The name, age, and address of each ~~applicant.~~foster parent.

~~(2) The date of the application.~~

(3) The ~~applicant's~~ foster parent's supervising agency.

(4) ~~Any~~ The number of hours of mandated training completed by the ~~applicant and the dates of training.~~foster parent.

(5) ~~Whether the applicant was licensed and the~~The date of the initial licensure.

(6) The current licensing period.

(7) Any adverse licensing actions.

~~(8) Any other information deemed necessary by the Division of Social Services.~~

(b) The register shall be a public record under Chapter 132 of the General Statutes. However, the Division, without penalty, may withhold any specific information about a foster parent to the extent the release of the information would likely pose a threat to the health or safety of the foster parent or a foster child. A person who is denied access to information under this section may seek a court order compelling disclosure or copying in accordance with G.S. 132-9(a). Information not specified in subsection (a) of this section shall be considered confidential and not subject to disclosure."

SECTION 3. This act becomes effective October 1, 2011.

HOUSE BILL 387:
Access Confidential Info/Child Abuse/Neglect.-AB

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 17, 2011
Introduced by:	Reps. Glazier, Stevens, Parfitt	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 387 would clarify when, to whom, and under what circumstances the identity of a reporter of child abuse or neglect may be disclosed. It would also clarify what information the state Division of Social Services must keep in the foster care registry, and under what circumstances confidential information may be withheld.***

BILL ANALYSIS:

Section 1. The North Carolina Juvenile Code provides that every person or institution who has cause to suspect abuse, neglect, dependency, or death by maltreatment of a child, must make a report to DSS in the county where the child resides or is found. The law directs DSS to hold "in strictest confidence" the information received in reports, including the reporter's identity. The confidentiality requirement is not absolute, and is subject to five specific exceptions.

House Bill 387 would clarify that DSS is required to disclose the reporter's identity to federal, State, or local government entities or their agents with a court order, or without a court order when the entity demonstrates a need for identity information in order to perform its mandated duties.

Section 2 would require the Department of Health and Human Services' Division of Social Services (Division) to keep a register of all licensed family and therapeutic foster homes, not just licensure applicants, and makes conforming changes as to what information the register must include. The Division would have the discretion to withhold any specific information about a foster parent if the release of the information would likely pose a health or safety risk to the foster parent or child. Anyone denied access to the information would have the right to seek a court order compelling disclosure.

EFFECTIVE DATE: The act would become effective October 1, 2011.

H387-SMTJ-37(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 650
PROPOSED COMMITTEE SUBSTITUTE H650-CSRC-27 [v.4]

5/18/2011 12:03:22 AM

Short Title: Amend Various Gun Laws/Castle Doctrine. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE WHEN A PERSON MAY USE DEFENSIVE FORCE AND TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.**

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer. The term "law enforcement officer" shall include a duly authorized bail bondsman, or his or her employee, who is acting under lawful authority.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, the home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption provided in subsection (b) of this section shall be rebuttable if the use of defensive force occurs in a motor vehicle or a workplace. The presumption set forth in subsection (b) of this section does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a minor child or minor grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

"**§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or herself or another.

(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

"**§ 14-51.4. Justification for defensive force not available.**

The justification described in G.S. 14-51.2, and 14-51.3 is not available to a person who used defensive force and who:

(1) Was attempting to commit, committing, or escaping after the commission of a felony.

(2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if:

a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger.

b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the National Guard when called into actual service;

(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(4a) Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26; provided that the person shall not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 4. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used, or~~ operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a ~~Class I felony~~ Class 1 misdemeanor for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a Class G felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class G felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) ~~Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed,~~ Subsection (b) of this section shall not apply to any person who possesses or carries any gun,

rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school ~~if~~in any of the following circumstances:

~~(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and~~

~~(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and~~

(1b) The person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(g) This section shall not apply to any of the following:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.

(1a) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, and North Carolina Forest Service personnel, and any private police employed by a school, when acting in the discharge of their official duties.

(3) Home schools as defined in G.S. 115C-563(a).

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.

(6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of the guard's duties with the permission of the college or university.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 5. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person willfully and intentionally to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 6. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a Class 2 misdemeanor."

SECTION 7. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.**

(a) ~~In accordance with G.S. 50B-3.1, it~~ It is unlawful for any ~~person~~ person, if the person has been ordered not to do so pursuant to G.S. 50B-3.1, to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed

firearms ~~if ordered by the court~~ for so long as that protective order or any successive protective order with a firearm prohibition entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor."

SECTION 8. G.S. 14-277.1 reads as rewritten:

"**§ 14-277.1. Communicating threats.**

(a) A person is guilty of a Class 1 misdemeanor if without lawful ~~authority:~~authority or justification:

(1) He willfully threatens to physically injure the person or that person's child, sibling, spouse, or dependent or willfully threatens to damage the property of another;

(2) The threat is communicated to the other person, orally, in writing, or by any other means;

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

(4) The person threatened believes that the threat will be carried out.

(b) A violation of this section is a Class 1 misdemeanor."

SECTION 9. G.S. 14-277.2 reads as rewritten:

"**§ 14-277.2. Weapons at parades, etc., prohibited.**

(a) It shall be unlawful for any person participating ~~in, affiliated with,~~ in or present as a spectator at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions to willfully or intentionally possess or have immediate access to any dangerous weapon. Violation of this subsection shall be a Class 1 misdemeanor. ~~It shall be presumed that any~~ Any rifle or gun carried on a rack in a pickup truck ~~at a holiday parade or in a funeral procession~~ or otherwise locked within a vehicle or stored in a locked container securely affixed to a vehicle does not violate the terms of this ~~act.~~section.

(b) For the purposes of this section the term "dangerous weapon" shall include those weapons specified in G.S. 14-269, 14-269.2, 14-284.1, or ~~14-288.8 or any other object capable of inflicting serious bodily injury or death when used as a weapon.~~14-288.8.

(c) The ~~provisions~~ prohibitions of this section shall not apply ~~to~~ to any of the following:

(1) ~~a~~ A person exempted by the provisions of G.S. ~~14-269(b)~~ 14-269(b).

(2) ~~or to persons~~ A person authorized by State or federal law to carry dangerous weapons in the performance of ~~their duties~~ the person's duties.

(3) ~~or to any~~ Any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place.

(4) A person who is carrying a concealed handgun and has a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24."

SECTION 10. G.S. 14-288.8(b) reads as rewritten:

"(b) This section does not apply ~~to~~to any of the following:

(1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(5) Persons who lawfully possess or own a weapon of mass death and destruction in compliance with 26 U.S.C. Chapter 53, §§5801-5871."

SECTION 11. G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is ~~located.~~ located; a person who lawfully possesses or owns a machine gun, submachine gun or other like weapon as defined by subsection (a) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

SECTION 12. G.S. 14-402(a) reads as rewritten:

"**§ 14-402. Sale of certain weapons without permit forbidden.**

(a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol or crossbow unless: (i) a license or permit is first obtained under this Article by the purchaser or receiver from the sheriff of the county in which the purchaser or receiver resides; ~~or~~ (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the ~~purchase.~~ purchaser or (iii) the purchaser or receiver is a sworn law-enforcement officer who has been certified by the North Carolina Criminal Justice Education and Training Standards Commission."

SECTION 13. Article 53A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.**

(a) The following definitions apply in this section:

(1) Ammunition. – Any cartridge, shell, or projectile designed for use in a firearm.

(2) Firearm. – A handgun, shotgun, or rifle which expels a projectile by action of an explosion.

(3) Handgun. – A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

(4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to engage in the business of dealing in firearms.

(5) Materially false information. – Information that portrays an illegal transaction as legal or a legal transaction as illegal.

(6) Private seller. – A person who sells or offers for sale any firearm, as defined in G.S. 14-409.39, or ammunition.

(b) Any person who knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States is guilty of a Class F felony.

(c) Any person who provides to a licensed dealer or private seller of firearms or ammunition information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.

(d) Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

(e) This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of the law enforcement officer."

SECTION 14. G.S. 14-409.10 reads as written:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Notwithstanding any other provision of law of this State, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 15. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by this section or other State statute, no county or municipality, or instrumentality or agent thereof, by ordinance, resolution, exercise of proprietary authority, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. ~~Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found~~

~~not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.~~However, an ordinance that is designed or enforced effectively to restrict or prohibit the sale, purchase, transfer, manufacture, or display of firearms, ammunition, or firearm accessories that are otherwise lawful under the laws of this State is in conflict with this section and is void.

(d) No county or municipality, or instrumentality or agent thereof, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, ~~including~~ or from prohibiting the possession of firearms in public-owned ~~buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas,~~ buildings, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is ~~on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.~~ in parking facilities within or attached to such buildings. A prohibition on firearms in publicly owned buildings shall not apply to business or residential lessees occupying the premises.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

SECTION 16. Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-409.41. No prohibition regarding the transportation or storage of a firearm in locked motor vehicle by business, commercial enterprise, or employer; civil liability; enforcement.**

(a) As used in this section, the term "motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under Chapter 20 of the General Statutes.

(b) A business, commercial enterprise, or employer shall not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition when the person is otherwise in compliance with all other applicable laws and regulations and the firearm or ammunition is locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle.

(c) Subsection (b) of this section shall not apply to the following:

(1) Vehicles owned or leased by an employer.

(2) Where transport or storage of a firearm is prohibited by State or federal law or regulation.

(d) A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (b) of this section may bring a civil action in the appropriate court against any business entity, commercial enterprise, or employer who committed or caused such violation. A person who would be entitled legally to transport or store a firearm or ammunition, but who would be denied the ability to transport or store a firearm or ammunition by a policy in violation of subsection (b) of this section, may bring a civil action in the appropriate court to enjoin any business entity, commercial enterprise, or employer from violating subsection (b) of this section.

(e) An employee discharged by an employer, business entity, or commercial enterprise for violation of a policy or rule prohibited under subsection (b) of this section, when he or she was lawfully transporting or storing a firearm out of plain sight in a locked motor vehicle, is entitled to full recovery as specified in subdivisions (1) through (4) of this subsection, inclusive. If the demand for the recovery is denied, the employee may bring a civil action in the courts of this State against the employer, business entity, or commercial enterprise and is entitled to the following:

(1) Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.

(2) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(3) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.

(4) Payment of reasonable attorneys' fees and legal costs incurred.

(f) A business, commercial enterprise, employer, or property owner that allows persons to transport or store any firearm or ammunition when the person is otherwise in compliance with all other applicable laws and regulations and the firearm or ammunition is locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle shall have complete immunity and shall not be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored in accordance with this section including, but not limited to, the theft of a firearm from an employee's automobile. Nothing contained in this section shall create a new duty on the part of any business, commercial enterprise, employer, or property owner. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a concealed firearm on the premises.

(g) In any action relating to the enforcement of any right or obligation under subsections (d) and (e) of this section, the reasonable, good-faith efforts of a business, commercial enterprise, employer, or property owner to comply with other applicable and irreconcilable federal or State safety laws or regulations shall be a complete defense to any liability of the business, commercial enterprise, employer, or property owner.

(h) It is the intent of this section to reinforce and protect the right of each citizen lawfully to transport and store firearms within his or her vehicle for lawful purposes in any place the vehicle is otherwise permitted to be and whenever this would not contravene existing federal or State law or regulation."

SECTION 17. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm

muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 18. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by ~~G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1,~~ G.S. 14-269.2 and G.S. 14-269.4, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ or on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property."

SECTION 19. G.S. 14-415.12 reads as rewritten:

"**§ 14-415.12. Criteria to qualify for the issuance of a permit.**

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

~~(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.~~

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to ~~own, possess,~~ possess or receive a firearm under the provisions of State or federal law.

~~(2) Is under indictment or against whom a finding of probable cause exists for a felony.~~

~~(3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.~~

~~(4) Is a fugitive from justice.~~

~~(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.~~

~~(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.~~

~~(7) Is or has been discharged from the armed forces under conditions other than honorable.~~

~~(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence~~

~~constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.~~

~~(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.~~

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

(c) An applicant shall not be ineligible to receive a concealed carry permit under ~~subdivision (6) of subsection (b) of~~ this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under any provision of this section."

SECTION 20. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12."

SECTION 21. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 22. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit,

the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and the ~~reasonableness of the sheriff's refusal.~~ sheriff's refusal shall be sustained only if the sheriff has demonstrated that the applicant is prohibited from receiving or possessing a firearm by a provision of federal or State law, is currently the subject of criminal or other proceedings that could lead to such a prohibition, or otherwise fails to meet the criteria of this section. The determination by the court ~~shall be final.~~ is an appealable final order."

SECTION 23. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 24. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 25. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and ~~the reasonableness of the sheriff's refusal.~~ the sheriff's refusal shall be sustained only if the sheriff demonstrates that the permittee is or has become disqualified for a permit under the terms of this section."

SECTION 26. G.S. 14-415.21 is repealed.

SECTION 27. G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~ North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 28. G.S. 50B-3.1 reads as rewritten:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used ~~by the sheriff to pay the costs of administering this section and for other law enforcement purposes.~~ to offset the cost of storage and in no instance may they exceed the actual storage costs. The county shall expend the restricted funds for ~~these purposes~~ this purpose only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. ~~The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.~~

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order ~~expires,~~ expires and does not otherwise find the defendant is precluded from

possessing or receiving a firearm pursuant to State or federal law, the court shall enter an order directing the return of any firearms surrendered or seized pursuant to this section to the defendant, and the defendant may retrieve any weapons surrendered to the ~~sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.~~sheriff.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges for offenses alleged to have been committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any such pending criminal ~~charges committed against the person that is the subject of the current protective order.~~ charges. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.
(2) Whether the defendant is subject to any other protective orders.
(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.
(4) Whether the defendant has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order.

The court shall ~~deny the return of firearms, ammunition, or permits if~~ grant the motion unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or ~~if the defendant~~ has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items ~~by~~ by, or their surrender to, the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

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

federal law, shall be provided to the ~~defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.~~defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms ~~to~~to do any of the following:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the ~~court;~~ court.

~~(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or~~

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order with a fiream prohibition entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor.

(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 29. Article 16 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-156. Liability protection for businesses; firearms.**

It is the intent of the General Assembly that the decision of a business, commercial enterprise, employer, or property owner, allowing persons with handgun permits to carry a handgun on such property, does not constitute an occupational safety and health hazard within the jurisdiction of thie Chapter and such a business, commercial enterprise, employer, or property owner may not be cited under any provision of Article 16 of this Chapter, including, G.S. 95-129(1), having civil penalties imposed under G.S. 95-138 or criminal penalties imposed under G.S. 95-139. The Attorney General shall intervene and defend this Section in any cause of action brought as a private right of action or by the Occupational Safety and Health Administration of the United States Department of Labor. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a concealed firearm on the premises."

SECTION 30. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 31. G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. ~~A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public~~

~~property. This section does not limit a county's authority to take action under Chapter 14, Article 36A.~~"

SECTION 32. G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement ~~officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes.~~officers."

SECTION 33. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 650:
Amend Various Gun Laws/Castle Doctrine

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 17, 2011
Introduced by:	Reps. Hilton, LaRoque, Cleveland, Hastings	**Prepared by:**	Kory Goldsmith Committee Counsel
Analysis of:	PCS to First Edition H650-CSRC-27		

SUMMARY: HB650 would amend numerous State laws related to the ownership and possession of guns. It would also expand the "Castle Doctrine" to apply to a motor vehicle or the workplace.

BILL ANALYSIS:

Section 1 would eliminate the "objective analysis" by stating that a person is presumed to have held a reasonable fear of death or bodily harm if both of the following apply:

- (1) The intruder was unlawfully and forcibly entering, or had unlawfully and forcibly entered the home, vehicle or workplace or removing or attempting to remove another from these locations (a question of fact), and
- (2) The person using defensive force either knew or had reason to believe that an unlawful act was occurring or occurred.

The presumption would be rebuttable if the entry occurs in a motor vehicle or the workplace.

Section 2 repeals G.S. 14-51.1, the current law regarding use of deadly physical force against an intruder. It provides that deadly force may be used to prevent a forcible entry into the home or to terminate the unlawful entry if:

- (1) The occupant reasonably apprehends that the intruder might kill or inflict serious bodily harm to the occupant or others; or
- (2) the occupant reasonably believes that the intruder intended to commit a felony in the home.

The determination is fact-based and subjective-objective. Whether someone alleged to be an intruder had been attempting to, or had already, unlawfully and forcibly entered the home is a fact-based issue. The occupant must believe [subjective] that the intruder intended to kill or inflict serious bodily harm commit a felony. If so, is the belief reasonable [objective] under the circumstances?

Section 3 amends G.S. 14-269(b) regarding those individuals who may carry a concealed weapon when not on individual's property without first obtaining a concealed carry permit. It would add a qualified retired law enforcement officer who is certified by the North Carolina Criminal Justice Education and Training Standards Commission provided the person is not consuming, or have remaining in the officer's body, alcohol or an unlawful controlled substance.

Section 4 would amend G.S. 14-269.2 (Weapons on campus or other educational property) to reduce the penalty for carrying a firearm on educational property from a Class I felony to a Class 1 misdemeanor. In order to be held criminally liable, the defendant would have to *knowingly* possessor carry the weapon. A person would not be liable for the offense if the person held a permit to carry a concealed weapon, the firearm is in a closed container within a locked motor vehicle or in a located container securely affixed to the person's vehicle.

Section 5 would amend G.S. 14-269.4 (Weapons on State Property and in courthouses) In order to be held criminally liable, the defendant would have to knowingly and intentionally possess carry a deadly weapon onto certain State property or any building housing a General Court of Justice. The bill would

also exempt a person who holds a valid permit to carry a concealed weapon if the firearm is in a closed container within a locked motor vehicle or in a located container securely affixed to the person's vehicle.

Section 6 would add the "knowingly and intentionally" requirement to the prohibition that persons under the age of 18 may not possess or carry a handgun.

Sections 7 and 28 would amend G.S. 14-269.9 (Purchase or possession of firearms by person subject to domestic violence order prohibited) and G.S. 50B-3.1 (Surrender and disposal of firearms; violations; exemptions) to provide that a person who is subject to a 50B order for may own, but not possess, a firearm during the pendency of the order. When the order expires, and provided the defendant is not otherwise precluded from possessing the firearm, the court shall enter an order directing the return of the firearm. The penalty for a violation of either statute would also be reduced from a Class H felony to a Class 1 misdemeanor.

Section 8 would amend G.S. 14-227.1 (Communicating threats) to provide that a person may be guilty of communicating a threat in certain circumstances if the threat is made "without lawful justification."

Section 9 would amend G.S. 14-277.2 (Weapons at parades, etc., prohibited) to allow a person to possess a rifle or gun on a rack in a pickup truck or otherwise locked within a vehicle or stored in a locked container securely affixed to the vehicle. It would also exempt persons carrying a concealed handgun if they have a valid concealed carry permit.

Sections 10 and 11 would allow a person to possess a weapon of mass death and destruction or a machine gun if that person possesses and owns the weapons in compliance with federal law.

Section 12 amends G.S. 14-402 to allow a sworn law-enforcement officer who is certified by the North Carolina Criminal Justice Education and Training Standards Commission to purchase a pistol or a crossbow without first obtaining a pistol permit.

Section 13 makes it a Class F felony to knowingly solicit, persuade, encourage or entice a licensed dealer or private sell of firearms or ammunition to transfer the firearm or ammunition if the person knows the transfer will violate State or federal law. It would also be a Class F felony to provide materially false information to a licensed dealer or private sell of firearms or ammunition with the intent to deceive dealer about the legality of the transfer..

Section 14 would allow a citizen of this State to purchase a firearm in another state if the person undergoes a background check that satisfies the law of that state and that include an inquire of the National Instant Background Check System.

Section 15 amends G.S. 14-409.40 (Statewide uniformity of local regulation) to prohibit a unit of local government from adopting a general zoning plan that prohibits any commercial activity within a fixed distance of a school. It would also prohibit a unit of local government from prohibiting a person from storing a firearm in a motor vehicle that is in a parking facility within or attached to the governmental building. **Sections 31 and 33** make conforming changes.

Section 16 amends Article 53B (Firearm Regulation) of Chapter 14 (Criminal Law) of the General Statutes to add a new section providing that no business, commercial enterprise, or employer shall prohibit the transportation or storage of a firearm or ammunition when the firearm and ammunition are locked out of sight in a motor vehicle. It exempts the following from the storage prohibition: vehicles owned or leased by an employer and where transport or storage of a firearm is prohibited by State or federal law or regulation. **Section 29** adds a provision to Chapter 95 which would prevents a decision by a business, commercial enterprise or employer to allow persons with handgun permits to carry the handgun on the premises to constitute an occupational hazard.

Section 17 amends G.S. 14-415.1 (Possession of firearms, etc., by felon prohibited) to allow a person who is pardoned or whose firearms rights have been restored to be eligible to possess a firearm.

Section 18 amends G.S. 14-415.11 (Scope of concealed carry permit) to allow individuals with valid permits to carry a concealed weapon at parades, assemblies and at the Legislative Complex.

Section 19 amends G.S. 14-415.12 (Criteria to qualify for the issuance of a permit) to remove the listed disqualifications, most of which are already covered under other State and federal law.

Section 20 limits the permissible use of a release of mental health records.

Section 21 makes a conforming change.

Section 22 reduces, from 90 to 45 days, the amount of time a sheriff has to renew a concealed carry permit. It also removes the fingerprint requirement for renewals.

Section 23 makes a technical change.

Section 24 removes social security numbers from the list of identifying information a sheriff must keep related to concealed carry permittees.

Section 25 on an appeal of a denial to issue a concealed carry permit, the statute is amended to place on the sheriff the burden of showing that a person who applies for or seeks to renew a concealed carry permit is disqualified from receiving one.

Section 26 repeals the criminal penalties for failing to a concealed carry permit when carrying a concealed weapon, or for failing to inform a law enforcement officer that you possess a valid permit.

Section 27 makes North Carolina's concealed carry reciprocity statute a pure recognition statute.

Section 30 prohibits the Legislative Services Commission from adopting a rule that would prohibit the transportation or storage of a firearm in a locked vehicle when the vehicle is parked on the Legislative Complex.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

H650-SMRC-30(CSRC-27) v1

HOUSE BILL 650

Short Title:	Amend Various Gun Laws.	(Public)
Sponsors:	Representatives Hilton, LaRoque, Cleveland, and Hastings (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used,~~ or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a ~~Class I felony~~ Class 1 misdemeanor for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a Class G felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or

other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class G felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) ~~Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed,~~ Subsection (b) of this section shall not apply to any person who possesses or carries any gun, rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school ~~if:~~ in any of the following circumstances:

~~(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and~~

~~(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and~~

(1b) The person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(g) This section shall not apply to any of the following:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.

(1a) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, and North Carolina Forest Service personnel, and any private police employed by a school, when acting in the discharge of their official duties.

(3) Home schools as defined in G.S. 115C-563(a).

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.

(6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of the guard's duties with the permission of the college or university.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 2. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person willfully and intentionally to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b);~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24;~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms;~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully

completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

~~(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.~~

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a Class 2 misdemeanor."

SECTION 4. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.**

(a) ~~In accordance with G.S. 50B-3.1, it~~ It is unlawful for any ~~person~~ person, if the person has been ordered not to do so pursuant to G.S. 50B-3.1, to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms ~~if ordered by the court~~ for so long as that protective order or any successive protective order with a firearm prohibition entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor."

SECTION 5. G.S. 14-277.1 reads as rewritten:

"**§ 14-277.1. Communicating threats.**

(a) A person is guilty of a Class 1 misdemeanor if without lawful ~~authority:~~authority or justification:

(1) He willfully threatens to physically injure the person or that person's child, sibling, spouse, or dependent or willfully threatens to damage the property of another;

(2) The threat is communicated to the other person, orally, in writing, or by any other means;

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

(4) The person threatened believes that the threat will be carried out.

(b) A violation of this section is a Class 1 misdemeanor."

SECTION 6. G.S. 14-277.2 reads as rewritten:

"**§ 14-277.2. Weapons at parades, etc., prohibited.**

(a) It shall be unlawful for any person participating ~~in, affiliated with,~~ in or present as a spectator at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions to willfully or intentionally possess or have immediate access to any dangerous weapon. Violation of this subsection shall be a Class 1 misdemeanor. ~~It shall be presumed that any~~ Any rifle or gun carried on a rack in a pickup truck ~~at a holiday parade or in a funeral procession~~ or otherwise locked within a vehicle or stored in a locked container securely affixed to a vehicle does not violate the terms of this ~~act.~~section.

(b) For the purposes of this section the term "dangerous weapon" shall include those weapons specified in G.S. 14-269, 14-269.2, 14-284.1, or ~~14-288.8 or any other object capable of inflicting serious bodily injury or death when used as a weapon.~~14-288.8.

(c) The ~~provisions~~prohibitions of this section shall not apply ~~to~~ to any of the following:

(1) ~~a~~ A person exempted by the provisions of G.S. ~~14-269(b)~~ 14-269(b).

(2) ~~or to persons~~ A person authorized by State or federal law to carry dangerous weapons in the performance of ~~their duties~~ the person's duties.

(3) ~~or to any~~ Any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place.

(4) A person who is carrying a concealed handgun and has a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24."

SECTION 7. G.S. 14-288.12(b) reads as rewritten:

"(b) The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public places, including directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, and the movement of persons within the area;

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;

(4) ~~Upon~~ Subject to G.S. 14-288.1A, upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

SECTION 8. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by this section or other State statute, no county or municipality, or instrumentality or agent thereof, by ordinance, resolution, exercise of proprietary authority, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms

ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. ~~Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.~~However, an ordinance that is designed or enforced effectively to restrict or prohibit the sale, purchase, transfer, manufacture, or display of firearms, ammunition, or firearm accessories that are otherwise lawful under the laws of this State is in conflict with this section and is void.

(d) No county or municipality, or instrumentality or agent thereof, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, ~~including~~ or from prohibiting the possession of firearms in public-owned ~~buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas,~~ buildings, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is ~~on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.~~ in parking facilities within or attached to such buildings. A prohibition on firearms in publicly owned buildings shall not apply to business or residential lessees occupying the premises.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

SECTION 9. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:
(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and
(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.
(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 10. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by ~~G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1,~~ G.S. 14-269.2 and G.S. 14-269.4, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ or on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property."

SECTION 11. G.S. 14-415.12 reads as rewritten:

"§ 14-415.12. Criteria to qualify for the issuance of a permit.

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

~~(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.~~

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to ~~own, possess,~~ possess or receive a firearm under the provisions of State or federal law.

~~(2) Is under indictment or against whom a finding of probable cause exists for a felony.~~

~~(3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.~~

~~(4) Is a fugitive from justice.~~

~~(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.~~

~~(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.~~

~~(7) Is or has been discharged from the armed forces under conditions other than honorable.~~

~~(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1,~~

~~14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.~~

~~(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.~~

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

(c) An applicant shall not be ineligible to receive a concealed carry permit under ~~subdivision (6) of subsection (b) of~~ this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under any provision of this section."

SECTION 12. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12."

SECTION 13. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 14. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The

determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and the ~~reasonableness of the sheriff's refusal.~~ sheriff's refusal shall be sustained only if the sheriff has demonstrated that the applicant is prohibited from receiving or possessing a firearm by a provision of federal or State law, is currently the subject of criminal or other proceedings that could lead to such a prohibition, or otherwise fails to meet the criteria of this section. The determination by the court ~~shall be final.~~ is an appealable final order."

SECTION 15. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 16. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 17. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and ~~the reasonableness of the sheriff's refusal.~~ the sheriff's refusal shall be sustained only if the sheriff demonstrates that the permittee is or has become disqualified for a permit under the terms of this section."

SECTION 18. G.S. 14-415.21 is repealed.

SECTION 19. G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~ North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 20. G.S. 50B-3.1 reads as rewritten:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used ~~by the sheriff to pay the costs of administering this section and for other law enforcement purposes.~~ to offset the cost of storage and in no instance may they exceed the actual storage costs. The county shall expend the restricted funds for ~~these purposes~~ this purpose only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. ~~The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.~~

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order ~~expires,~~ expires and does not otherwise find the defendant is precluded from possessing or receiving a firearm pursuant to State or federal law, the court shall enter an order directing the return of any firearms surrendered or seized pursuant to this section to the defendant, and the defendant may retrieve any weapons surrendered to the ~~sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to~~

~~State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.~~sheriff.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges for offenses alleged to have been committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any such pending criminal ~~charges committed against the person that is the subject of the current protective order.~~ charges. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.
(2) Whether the defendant is subject to any other protective orders.
(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.
(4) Whether the defendant has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order.

The court shall ~~deny the return of firearms, ammunition, or permits if~~ grant the motion unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or ~~if the defendant~~ has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items ~~by~~ by, or their surrender to, the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the ~~defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.~~defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms ~~to:~~to do any of the following:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the ~~court;~~ court.

~~(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or~~

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order with a firearm prohibition entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor.

(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 21. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 22. G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. ~~A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A.~~"

SECTION 23. G.S. 166A-3 reads as rewritten:

"**§ 166A-3. Limitations.**

Nothing in this Article shall be construed ~~to:~~to do any of the following:

(1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or ~~war; or~~ war.

(2) Limit, ~~modify or abridge~~ modify, or abridge, except as provided in subdivision (3) of this section, the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

(3) Authorize the taking, confiscation, or seizure of otherwise lawfully possessed firearms, ammunition, or components thereof or to authorize the imposition of any additional restriction or prohibition on the possession, carrying, transportation, sale, purchase, storage, or use of lawfully possessed firearms, ammunition, or ammunition components during a proclaimed state of disaster or martial law."

SECTION 24. G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement ~~officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes.~~officers."

SECTION 25. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 690
PROPOSED COMMITTEE SUBSTITUTE H690-CSRU-3 [v.5]

5/17/2011 8:38:16 PM

Short Title: R/E Closing Interest/Civil Penalty UPL. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND, AND TO PROVIDE FOR A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding the following new section to read:

"**§ 45A-9. Interest on settlement agent's real estate trust and escrow accounts.**

(a) A settlement agent who maintains a trust or escrow account for purposes of receiving and disbursing closing funds and loan funds shall pay any interest earned on funds held in those accounts to the North Carolina State Bar to be used for the purposes authorized by the North Carolina State Bar under the Interest on Lawyers' Trust Account Program.

(b) The North Carolina State Bar shall adopt rules for the collection and disbursement of funds required to be paid to the North Carolina State Bar under subsection (a) of this section."

SECTION 2. G.S. 84-8 reads as rewritten:

"**§ 84-8. Punishment for ~~violations; legal clinics of law schools and certain law students and lawyers excepted.~~violations.**

(a) Any person, corporation, or association of persons violating any of the provisions of G.S. 84-4 ~~to G.S. 84-7~~through G.S. 84-6 or G.S. 84-9 shall be guilty of a Class 1 misdemeanor.

(b) No person shall be entitled to collect any fee for services performed in violation of G.S. 84-4 through G.S. 84-6, G.S. 84-9, or G.S. 84-10.1.

~~The provisions of G.S. 84-4 to G.S. 84-7 shall not apply to the following:~~

~~(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.~~

~~(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.~~

~~(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the~~

~~supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state.~~"

SECTION 3. Article 1 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.**

The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.

(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.

(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state."

SECTION 4. G.S. 84-10 is repealed.

SECTION 5. Article 1 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-10.1. Private cause of action for the unauthorized practice of law.**

If any person violates any of the provisions of G.S. 84-4 through G.S. 84-6 or G.S. 84-9, fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to commit the unauthorized practice of law, in addition to any other liability imposed pursuant to this Chapter or any other applicable law, any person who is damaged by the unlawful acts set out in this section shall be entitled to maintain a private cause of action to recover damages and reasonable attorneys' fees."

SECTION 6 G.S. 84-21 reads as rewritten:

"**§ 84-21. Organization of Council; publication of rules, regulations and bylaws.**

(a) The Council shall adopt the rules pursuant to G.S. 45A-9.

(b) The rules and regulations adopted by the Council under this Article may be amended by the Council from time to time in any manner not inconsistent with this Article. Copies of all rules and regulations and of all amendments adopted by the Council shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North Carolina Supreme Court upon its minutes, and published in the next ensuing number of the North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."

SECTION 7. Sections 1 and 6 of this act become effective January 1, 2012. Sections 2, 3 and 4 of this act become effective December 1, 2011, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2011.

HOUSE BILL 690:
RE Closing Interest/Civil Penalty UPL

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 18, 2011
Introduced by:	Reps. Stevens, Jordan, T. Moore	**Prepared by:**	O. Walker Reagan Staff Attorney
Analysis of:	PCS to First Edition H690-CSRU-3		

SUMMARY: ***The Proposed Committee Substitute for House Bill 690 insures that all interest earned on real estate closing funds held in trust by settlement agents must be paid into the N.C. State Bar's Interest on Lawyers' Trust Account (IOLTA) program. The bill prohibits the recovery of fees for legal services performed as the unauthorized practice of law. The bill also creates a private cause of action for damages and attorney's fees arising from the unauthorized practice of law.***

CURRENT LAW: Chapter 45A of the General Statutes regulates settlements or closings of real estate transactions involving one- to four-family residential dwellings or lots restricted to residential use.

Article 1 of Chapter 84 of the General Statutes regulates the practice of law in NC. Attorneys are required to maintain their trust accounts as IOLTA accounts, for which interested earned on these accounts is paid to the NC State Bar. The NC Supreme Court has directed that funds in the IOLTA program are to be used by the NC State Bar to provide civil legal services for indigents, improvements in grievance and disciplinary procedures to protect the public from incompetent and unethical attorneys, loans for legal education, and other programs to improve the administration of justice as approved by the NC Supreme Court. Practicing law without a license (also known as the unauthorized practice of law) is a Class 1 misdemeanor. In addition to prosecution as a criminal offense, the NC State Bar is authorized to seek injunctive relief and permanent restraining orders against the continued unauthorized practice of law. Private causes of action for damages arising from the unauthorized practice of law are generally limited to actions based on fraud.

BILL ANALYSIS: **Section 1** of the proposed committee substitute for HB 690 amends the Good Funds Settlement Act by adding a new section to require that interest earned on trust or escrow accounts maintained by settlement agents closing real property transactions for one- to four-family residences be paid to the NC State Bar for IOLTA programs.

Section 2 prohibits a person engaged in the unauthorized practice of law from collecting fees for services performed and makes other conforming changes.

Section 3 recodifies current standard exceptions to the unauthorized practice of law.

Section 4 repeals a section setting out punishment for a specific unauthorized practice of law which is now included in the punishments being amended in Section 2 of the bill.

Section 5 creates a private cause of action for a person who is damaged by a person who commits the unauthorized practice of law, fraudulently holds him or herself out as a certified paralegal, or knowingly aids or abets another to commit the unauthorized practice of law. A person proving damages under this section will also be entitled to recover reasonable attorney's fees.

Section 6 makes a conforming change to allow the State Bar to make rules to implement **Section 1** of the bill.

EFFECTIVE DATE: The interest earned on trust or escrow account provisions (Sections 1 and 6) become effective January 1, 2012. Sections 2, 3 and 4 become effective December 1, 2011 and apply to offenses committed on or after that date. Sections 5 and 7 become effective October 1, 2011.

H690-SMRU-3(e1) v3

HOUSE BILL 690

Short Title:	Supervise RE Closings/Settlement Funds.	(Public)
Sponsors:	Representatives Stevens, Jordan, and T. Moore (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THAT RESIDENTIAL REAL ESTATE CLOSINGS AND SETTLEMENTS UNDER THE GOOD FUNDS SETTLEMENT ACT BE SUPERVISED BY ATTORNEYS LICENSED IN THIS STATE, TO REQUIRE THAT INTEREST EARNED ON REAL ESTATE SETTLEMENT FUNDS HELD IN TRUST OR ESCROW ACCOUNTS BE PAID INTO THE NORTH CAROLINA STATE BAR'S INTEREST ON LAWYERS' TRUST ACCOUNT FUND, AND TO PROVIDE A PRIVATE CAUSE OF ACTION FOR PERSONS HARMED BY THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 45A of the General Statutes is amended by adding the following new sections to read:

"**§ 45A-9. Real estate closings and settlements to be supervised and conducted by attorneys licensed in this State.**

(a) Except as provided in subsection (b) of this section, closings and settlements shall be supervised and conducted by an attorney licensed under Chapter 84 of the General Statutes in accordance with this Chapter.

(b) Notwithstanding subsection (a) of this section, a nonattorney employee of a corporation selling real property owned by the corporation in a seller-financed real estate transaction may prepare purchase money loan documents to secure the indebtedness of the purchaser incurred for the purchase of real estate owned by the seller corporation.

(c) An attorney who performs a closing or settlement under this Chapter shall have in force and maintain professional malpractice insurance coverage with an insurance company licensed to sell insurance in this State with policy limits of no less than five hundred thousand dollars ($500,000) per incident and one million dollars ($1,000,000) aggregate. An attorney conducting a closing or settlement under this Chapter shall provide proof of insurance coverage required under this subsection in accordance with rules adopted by the North Carolina State Bar. The North Carolina State Bar shall make available to the public a listing of all attorneys who have complied with the provisions of this subsection, including the amounts of liability coverage and the company providing the coverage for each attorney.

(d) The North Carolina State Bar shall adopt rules for compliance with the requirements of subsection (c) of this section.

"**§ 45A-10. Interest on settlement agent real estate trust and escrow accounts.**

(a) A settlement agent who maintains a trust or escrow account for purposes of receiving and disbursing closing funds and loan funds shall pay any interest earned on funds

held in those accounts to the North Carolina State Bar to be used for the purposes authorized by the North Carolina State Bar under the Interest on Lawyers Trust Account Program.

(b) The North Carolina State Bar shall adopt rules for the collection and disbursement of funds required to be paid to the North Carolina State Bar under subsection (a) of this section."

SECTION 2. G.S. 84-8 reads as rewritten:

"**§ 84-8. Punishment for ~~violations; legal clinics of law schools and certain law students and lawyers excepted.~~violations.**

(a) ~~Any~~ Except as provided in subsection (b) of this section, any person, corporation, or association of persons violating the provisions of G.S. 84-4 ~~to G.S. 84-7~~through G.S. 84-6 shall be guilty of a ~~Class 1 misdemeanor.~~Class I felony.

(b) Any person who is in violation of the provisions of G.S. 84-4 through G.S. 84-6 due solely to the person's license being inactive as a result of the person's failure to timely pay annual State Bar dues as required or the failure to comply with the continuing legal education requirements established by the North Carolina State Bar under this Chapter, shall be guilty of a Class 1 misdemeanor. The failure to timely pay annual State Bar dues as required or the failure to comply with the continuing legal education requirements established by the North Carolina State Bar under this Chapter shall not constitute an offense under this section.

(c) No person shall be entitled to collect any fee for services performed in violation of G.S. 84-4 through G.S. 84-6.

~~The provisions of G.S. 84-4 to G.S. 84-7 shall not apply to the following:~~

~~(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.~~

~~(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.~~

~~(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state.~~"

SECTION 3. Article 1 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-7.1. Legal clinics of law schools and certain law students and lawyers excepted.**

The provisions of G.S. 84-4 through G.S. 84-6 shall not apply to any of the following:

(1) Any law school conducting a legal clinic and receiving as its clientage only those persons unable financially to compensate for legal advice or services rendered and any law student permitted by the North Carolina State Bar to act as a legal intern in such a legal clinic.

(2) Any law student permitted by the North Carolina State Bar to act as a legal intern for a federal, state, or local government agency.

(3) Any lawyer licensed by another state and permitted by the North Carolina State Bar to represent indigent clients on a pro bono basis under the supervision of active members employed by nonprofit corporations qualified to render legal services pursuant to G.S. 84-5.1. This provision does not apply to a lawyer whose license has been suspended or revoked in any state."

SECTION 4. Article 1 of Chapter 84 of the General Statutes is amended by adding a new section to read:

"**§ 84-10.1. Private cause of action for the unauthorized practice of law.**

If any person violates any of the provisions of G.S. 84-4 through G.S. 84-6, or fraudulently holds himself or herself out as a North Carolina certified paralegal by use of the designations set forth in G.S. 84-37(a), then in addition to any and all other liability imposed pursuant to this Chapter, any person who is damaged shall be entitled to maintain a cause of action to recover treble damages and reasonable attorneys' fees."

SECTION 5. G.S. 84-21 reads as rewritten:

"**§ 84-21. Organization of Council; publication of rules, regulations and bylaws.**

(a) The Council shall adopt the rules pursuant to G.S. 45A-9 and G.S. 45A-10.

(b) The rules and regulations adopted by the Council under this Article may be amended by the Council from time to time in any manner not inconsistent with this Article. Copies of all rules and regulations and of all amendments adopted by the Council shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by the North Carolina Supreme Court upon its minutes, and published in the next ensuing number of the North Carolina Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."

SECTION 6. Sections 1 and 5 of this act become effective January 1, 2012. Sections 2 and 3 of this act become effective December 1, 2011, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 2011.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — May 18, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fran Piercy	Ragsdale Liggett
Kim Rosenberg	Attorneys Title
Paul Valone	@RNC
Anthony Roulette	NRA
Adam Pridemore	School of Gov't
Eddie Caldwell	NC Sheriffs' Assn.
[illegible]	Real Estate Lawyers Assn
Susan Taylor	North Carolina Coalition Against Domestic Violence
Paul Stock	NCBA
Elizabeth Robinson	NCRMA
Katie Hallaway	Lowe's

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C
Name of Committee

May 18, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lauran Whaley	NCCUL
Sandy Schultz	"
Henri McClees	McClees Consulting
Joe McClees	"

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C
Name of Committee

May 18, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jimmy Broughton	Womble Carlyle
Andrew Cagle	NC Sheriffs' Assn.
Cady Thomas	NCAR
[illegible]	ICLG
Colleen Kochanek	NCCADV
Ha Nguyen	NCCOB
McNeil Chestnut	FV 4th Comm Bics.
CP Dowell	The Insider
Kevin Kelley	NC DHHS DSS
[illegible]	DHHS
J Goodman	NC Chamber

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C
Name of Committee

May 18, 2011
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
W.T. Polk	Gov Office
Richard Boyce	Concerned Family Ltr
Dennis Allen	NC Rifle + Pistol Assoc.
Jane Watson	VAL Egnics

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE: JUDICIARY C

DATE: 5-18-11 **Room:** 415

*Name: Maycee Mimr
County: Lee
Sponsor: Michael Stone
*Name: Matthew Strickland
County: Lee
Sponsor: Michael Stone
*Name:
County:
Sponsor:
*Name:
County:
Sponsor:
*Name:
County:
Sponsor:

House Sgt-At Arms:

1. Name: LARRY ELLIOTT
2. Name: BILL MACRAE
3. Name:
4. Name:
5. Name:
6. Name:

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, May 25, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, May 25, 2011, at 10:05 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Johnathan Rhyne, Chair; Representative Tim Moore, Chair, Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, and Weiss.

Rep. Rhyne presided and called the meeting to order. Rep. Rhyne recognized the pages.

The following bill was considered:

HB 650, Amend Various Gun Laws (Representatives Hilton, LaRoque, Cleveland, and Hastings, Primary Sponsors). Rep. Rhyne accepted a motion from Rep. R. Brown to place the Proposed Committee Substitute before the committee. Rep. Hilton was recognized to speak on the bill. Kory Goldsmith, Staff, was recognized to explain the bill. Discussion by the committee. Public recognized to speak: Anthony Roulette (NRA), and Paul Valone (Grassroots NC). No vote was taken on the bill.

The meeting adjourned at 11:20 a.m.

Respectfully submitted,

Representative Johnathan Rhyne
Chair

Nancy Garriss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, May 25, 2011
Room 415 LOB

OPENING REMARKS

Representative Johnathan Rhyne, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, May 25, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **May 23, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

HOUSE BILL 650:
Amend Various Gun Laws/Castle Doctrine

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 25, 2011
Introduced by:	Reps. Hilton, LaRoque, Cleveland, Hastings	**Prepared by:**	Kory Goldsmith
Analysis of:	PCS to First Edition H650-CSRC-30		Committee Counsel

SUMMARY: ***HB650 would amend numerous State laws related to the ownership and possession of guns. It would also expand the "Castle Doctrine" to apply to a motor vehicle or the workplace.***

CURRENT LAW: Castle Doctrine: The General Assembly enacted G.S. 14-51.1 (see attached) in 1994. Prior to the passage of the law, deadly force could only be used if the lawful occupant believed that an intruder attempting to unlawfully and forcibly enter the home might kill or inflict serious bodily injury. The common law rules of self-defense applied to someone who was already within the home. There was no right to use deadly force to protect property within the home, i.e., the lawful occupant believed that the intruder was going to commit some felony (e.g., theft) other than inflicting injury on an occupant.

G.S. 14-51.1 provides that deadly force may be used to prevent a forcible entry into the home or to terminate the unlawful entry if:

(1) The occupant reasonably apprehends that the intruder might kill or inflict serious bodily harm to the occupant or others; OR
(2) The occupant reasonably believes that the intruder intended to commit a felony in the home.

The determination is now a fact-based, subjective-objective analysis. Whether someone alleged to be an intruder had been attempting to, or had already, unlawfully and forcibly entered the home is a fact-based issue. The occupant must believe [subjective] that the intruder intended to kill or inflict serious bodily harm commit a felony. If so, is the belief reasonable [objective] under the circumstances?

BILL ANALYSIS: Castle Doctrine

Section 1 enacts **G.S. 14-51.2.** which would eliminate the "objective analysis" by stating that a person is presumed to have held a reasonable fear of death or bodily harm if both of the following apply:

1. The intruder was unlawfully and forcibly entering, or had unlawfully and forcibly entered the home, or removing or attempting to remove another from the (a question of fact), AND

2. The person using defensive force either knew or had reason to believe that an unlawful act was occurring or occurred..

The presumption stated above would be rebuttable if the location where the intrusion occurred is either a vehicle or workplace

The statute also:

- Provides definitions for terms, and states that there is a presumption that a person held a reasonable fear of death or great bodily harm to himself or another if the two requirements listed in the statute are met. This removes the burden from the person using defensive force to prove that their belief was reasonable.
- In a criminal case, if the defendant asserts the use of justifiable force as a defense to the charge, then the prosecutor has the burden of proof by producing evidence which disproves the defense beyond a reasonable doubt. In a civil action where the person who used defensive force was the defendant, the plaintiff would have the burden in a civil action to prove that the fear was not reasonable.
- The act contains a list of exceptions to the presumption. The exceptions include circumstances where the person against whom the defensive force is used was a lawful resident, and there was no court order providing for non-contact by that person; the person being removed was a child or grandchild, or was in the lawful custody of the person removing them; the person using defensive force was furthering a criminal offense that involved the use of force; a law enforcement officer was the person against whom the force was used; and the person against whom the force was used had discontinued efforts to unlawfully enter and had exited the dwelling.
- The act also provides that a person who unlawfully and by force enters, or attempts to enter the specified locations is presumed to be doing so with the intent to commit an unlawful act involving force or violence.
- A person who justifiably uses force as provided in the section is immune from criminal prosecution and civil action. An exception to this immunity is where the force was used against a law enforcement officer acting in the performance of duties and who identified himself or herself, or the person using force knew or reasonably should have known that the person was a law enforcement officer.
- The act provides that a person in any of the specified locations has no duty to retreat, which is consistent with the current law in relation to the home.

Section 1 enacts **G.S. 14-51.3 – Use of force in defense of person; relief from criminal or civil liability,** a "stand your ground" provision. A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

(2) Under the circumstances permitted above in G.S. 14 51.2. (use of force occurs in the home, motor vehicle, or workplace).

This provision does not contain a presumption, i.e., the use of defensive force will be just on what is considered objectively reasonable for the purposes of defense. The use of deadly force would come under the previous rules that applied in the home, i.e., the person must have a reasonable belief that the force was necessary to prevent

imminent death or serious bodily harm to himself or herself, or another. However, the use of deadly force to prevent a felony (which is in the current "castle doctrine" as it pertains to the home) is not included in the act. The provision contains a provision concerning immunity from civil or criminal liability that is similar to the one contained in G.S. 14-51.2, above.

Section 1 also enacts **G.S. 14-51.4 – Justification for defensive force not available** which provides that the justifications for the use of defensive force if the person using the force (1) was attempting to commit a crime or escaping after the commission of a crime; or (2) provoked the use of force. However, even if the person initially provoked the use of force, he or she may still use defensive force if certain conditions are met.

Section 2 repeals G.S. 14-51.1, the current law regarding use of deadly physical force against an intruder. The bill repeals the current "Castle Doctrine" statute.

CURRENT LAW: Possession and carrying concealed weapons

G.S. 14-269(a) makes it unlawful for any individual to willfully and intentionally carry concealed about their person any of the following: bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, and other deadly weapon.

G.S. 14-269(a1) makes it unlawful to carry concealed a pistol or gun, unless it is on the individual's property, the individual has a concealed carry permit, or is a military permittee. Violation is a misdemeanor. The prohibition does not apply to ordinary pocket knives.

G.S. 14-269(b) provides that the prohibitions against carrying a concealed weapon do not apply to any of the following individuals:

1. Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties and acting under orders requiring them to carry arms and weapons.
2. Civil and law enforcement officers of the United States.
3. Officers and soldiers of the militia and the National Guard when called into actual service.
4. Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties.
5. Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

The individuals listed in #1-5 above are also exempt from the following statutory provisions. Persons who hold a concealed carry permit are subject to these provisions.

- **G.S. 14-269.2.** Weapons on campus or other education property.
- **G.S. 14-269.3.** Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed.
- **G.S. 14-269.4.** Weapons on State property and courthouses.
- **G.S. 14-277.2.** Weapons at parades, etc.

- **G.S. 14-288.7.** Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.
- **G.S. 14-288.8.** Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions.
- **G.S. 14-288.21.** Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; punishment.

BILL ANALYSIS: Possession and carrying a concealed weapon

Section 3 amends G.S. 14-269(b) regarding those individuals who may carry a concealed weapon when not on individual's property without first obtaining a concealed carry permit. It would add a qualified retired law enforcement officer who is certified by the North Carolina Criminal Justice Education and Training Standards Commission provided the person is not consuming, or have remaining in the officer's body, alcohol or an unlawful controlled substance.
Sections 4 and 5 would amend G.S. 14-269.2 (Weapons on campus or other educational property). Subsection (a) is amended by restricting the scope of the prohibition against weapons on educational property to property owned or operated by a school. Subsection (b) is amended so that in order to be criminally liable for possessing or carrying a gun onto educational property, the defendant would have to do so *willfully and intentionally.* The bill would also allow a person who holds a concealed carry permit to possess or carry a firearm on school property or to an extracurricular event provide the firearm is in a closed compartment or container in a locked vehicle or is in a locked container securely affixed to the vehicle.

Section 6 would amend G.S. 14-269.4 (Weapons on State Property and in courthouses) to exempt individuals who hold a valid permit to carry a concealed weapon if the firearm is in a closed container within a locked motor vehicle or in a located container securely affixed to the person's vehicle.

Section 7 would add the "knowingly and intentionally" requirement to the prohibition that persons under the age of 18 may not possess or carry a handgun. It would also increase the penalty for violation from a Class 2 to a Class 1 misdemeanor.

Sections 8, 27 and 28 would amend G.S. 14-269.9 (Purchase or possession of firearms by person subject to domestic violence order prohibited) and G.S. 50B-3.1 (Surrender and disposal of firearms; violations; exemptions) to provide that a person who is subject to a 50B order may own, but not possess, a firearm during the pendency of the order.

Sections 9 and 10 would allow a person to possess a weapon of mass death and destruction or a machine gun if that person possesses and owns the weapons in compliance with federal law.

Section 11amends G.S. 14-402 to allow a sworn law-enforcement officer who is certified by the North Carolina Criminal Justice Education and Training Standards Commission to purchase a pistol or a crossbow without first obtaining a pistol permit.

Section 12 makes it a Class F felony to knowingly solicit, persuade, encourage or entice a licensed dealer or private sell of firearms or ammunition to transfer the firearm or ammunition if the person knows the transfer will violate State or federal law. It would also be a Class F felony to provide materially false information to a licensed dealer or private sell of firearms or ammunition with the intent to deceive dealer about the legality of the transfer.

Section 13 would allow a citizen of this State to purchase a firearm in another state if the person undergoes a background check that satisfies the law of that state and that include an inquire of the National Instant Background Check System.

Section 14 amends Article 53B (Firearm Regulation) of Chapter 14 (Criminal Law) of the General Statutes to add a new section providing that no business, commercial enterprise, or employer shall prohibit the transportation or storage of a firearm or ammunition when the firearm and ammunition are locked out of sight in a motor vehicle. It exempts the following from the storage prohibition: vehicles owned or leased by an employer and where transport or storage of a firearm is prohibited by State or federal law or regulation. **Section 29** adds a provision to Chapter 95 which would prevents a decision by a business, commercial enterprise or employer to allow persons with handgun permits to carry the handgun on the premises to constitute an occupational hazard.

Section 15 amends G.S. 14-415.1 (Possession of firearms, etc., by felon prohibited) to allow a person who is pardoned or whose firearms rights have been restored to be eligible to possess a firearm.

Section 16 clarifies the circumstances when a person who holds a concealed carry permit has a duty to disclose to a law enforcement officer that the person holds a permit and is carrying a concealed weapon. The duty applies when the person is approached or addressed by an officer while the officer is in the performance of official duties.

Section 17 adds a new subsection to G.S. 14-415.11 (Scope of concealed carry permit). Unless otherwise provided by law, a person who holds a valid concealed carry permit may carry a weapon in a motor vehicle provided it is locked within the vehicle or stored in a locked container securely affixed to the vehicle.

Section 18 amends G.S. 14-415.11 (Scope of concealed carry permit) to allow individuals with valid permits to carry a concealed weapon at assemblies.

Section 19 limits the permissible use of a release of mental health records.

Section 20 makes a conforming change.

Section 21 reduces, from 90 to 45 days, the amount of time a sheriff has to renew a concealed carry permit. However, the 45 days is measured from the time the sheriff receives the required records concerning mental health or competency of the applicant.

Section 22 removes the requirement to provide fingerprints for a renewal application.

Section 23 removes social security numbers from the list of identifying information a sheriff must keep related to concealed carry permittees

Section 24 clarifies the grounds upon which a sheriff may revoke a concealed carry permit for misuse of the permit. A permit hold may not give a duplicate permit to another person unless that person is a vender and the duplicate is for record keeping purposes.

Section 25 reduces the penalty for second and subsequent offenses involving the failure of a concealed carry permit holder to carry the permit when also carrying a concealed weapon, or for failing to inform a law enforcement officer that the permittee is carrying a concealed weapon.

Section 26 makes North Carolina's concealed carry reciprocity statute a pure recognition statute.

Section 30 prohibits the Legislative Services Commission from adopting a rule that would prohibit the transportation or storage of a firearm in a locked vehicle when the vehicle is parked on the Legislative Complex.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before that date are not abated.

BACKGROUND:

§ 14-51.1. Use of deadly physical force against an intruder.

(a) A lawful occupant within a home or other place of residence is justified in using any degree of force that the occupant reasonably believes is necessary, including deadly force, against an intruder to prevent a forcible entry into the home or residence or to terminate the intruder's unlawful entry (i) if the occupant reasonably apprehends that the intruder may kill or inflict serious bodily harm to the occupant or others in the home or residence, or (ii) if the occupant reasonably believes that the intruder intends to commit a felony in the home or residence.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder in the circumstances described in this section.

(c) This section is not intended to repeal, expand, or limit any other defense that may exist under the common law.

Hal Pell, counsel to Senate Judiciary II, substantially contributed to the Castle Doctrine portion of this summary.

H650-SMRC-37(CSRC-30) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 650
PROPOSED COMMITTEE SUBSTITUTE H650-CSRC-30 [v.4]

5/25/2011 9:33:26 AM

Short Title: Amend Various Gun Laws/Castle Doctrine. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE WHEN A PERSON MAY USE DEFENSIVE FORCE AND TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.**

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer. The term "law enforcement officer" shall include a duly authorized bail bondsman, or his or her employee, who is acting under lawful authority.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, the home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption provided in subsection (b) of this section shall be rebuttable if the use of defensive force occurs in a motor vehicle or a workplace. The presumption set forth in subsection (b) of this section does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a minor child or minor grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

"**§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or herself or another.

(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

"**§ 14-51.4. Justification for defensive force not available.**

The justification described in G.S. 14-51.2, and 14-51.3 is not available to a person who used defensive force ~~and who~~and who:

(1) Was attempting to commit, committing, or escaping after the commission of a felony.

(2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if:

a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger.

b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the National Guard when called into actual service;

(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(4a) Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26; provided that the person shall not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful

controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 4. Subsections (a) and (b) of G.S. 14-269.2(a) and (b) read as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used,~~ or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a Class I felony for any person willfully and intentionally to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol."

SECTION 5. G.S. 14-269.2 is amended by adding a new subsections to read:

"(f1) It shall not be a violation of subsection (b) of this section for a person to possess or carry a firearm on educational property or to a curricular or extracurricular activity sponsored by a school if the person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle."

SECTION 6. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 7. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a ~~Class 2~~ Class 1 misdemeanor."

SECTION 8. G.S. 14-269.8(a) reads as rewritten:

"(a) ~~In accordance with G.S. 50B-3.1, it~~ It is unlawful for any ~~person~~ person, if the person has been ordered not to do so pursuant to G.S. 50B-3.1, to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms ~~if ordered by the court~~ for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect."

SECTION 9. G.S. 14-288.8(b) reads as rewritten:

"(b) This section does not apply ~~to:~~to any of the following:

(1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture

of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(5) Persons who lawfully possess or own a weapon as defined in subsection (c) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871."

SECTION 10. G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is ~~located.~~ located; a person who lawfully possesses or owns a weapon as defined by subsection (a) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

SECTION 11. G.S. 14-402(a), as amended by Section 1 of S.L. 2011-56 reads as rewritten:

"§ 14-402. Sale of certain weapons without permit forbidden.

(a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol bow unless: (i) a license or permit is first obtained under this Article by the purchaser or receiver from the sheriff of the county in which the purchaser or receiver resides; ~~or~~ (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the ~~purchase.~~ purchase; or (iii) the purchaser or receiver is a sworn law-enforcement officer who has been certified by the North Carolina Criminal Justice Education and Training Standards Commission.

It is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor."

SECTION 12. Article 53A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.**

(a) The following definitions apply in this section:

(1) Ammunition. – Any cartridge, shell, or projectile designed for use in a firearm.

(2) Firearm. – A handgun, shotgun, or rifle which expels a projectile by action of an explosion.

(3) Handgun. – A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

(4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to engage in the business of dealing in firearms.

(5) Materially false information. – Information that portrays an illegal transaction as legal or a legal transaction as illegal.

(6) Private seller. – A person who sells or offers for sale any firearm, as defined in G.S. 14-409.39, or ammunition.

(b) Any person who knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States is guilty of a Class F felony.

(c) Any person who provides to a licensed dealer or private seller of firearms or ammunition information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.

(d) Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

(e) This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of the law enforcement officer."

SECTION 13. G.S. 14-409.10 reads as written:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Notwithstanding any other provision of law of this State, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 14. Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-409.41. No prohibition regarding the transportation or storage of a firearm in locked motor vehicle by business, commercial enterprise, or employer; civil liability; enforcement.**

(a) As used in this section, the term "motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under Chapter 20 of the General Statutes.

(b) A business, commercial enterprise, or employer shall not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition when the person is otherwise in compliance with all other applicable laws and regulations and the firearm or ammunition is locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle.

(c) Subsection (b) of this section shall not apply to the following:

(1) Vehicles owned or leased by an employer.

(2) Where transport or storage of a firearm is prohibited by State or federal law or regulation.

(c1) Notwithstanding subsection (b) of this section, a public utility as defined in G.S. 62-3 may establish, maintain, and enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition on property used in the generation or control of electricity. This subsection shall not apply to a handgun that is

locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle by a person who has a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(d) A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (b) of this section may bring a civil action in the appropriate court against any business entity, commercial enterprise, or employer who committed or caused such violation. A person who would be entitled legally to transport or store a firearm or ammunition, but who would be denied the ability to transport or store a firearm or ammunition by a policy in violation of subsection (b) of this section, may bring a civil action in the appropriate court to enjoin any business entity, commercial enterprise, or employer from violating subsection (b) of this section.

(e) An employee discharged by an employer, business entity, or commercial enterprise for violation of a policy or rule prohibited under subsection (b) of this section, when he or she was lawfully transporting or storing a firearm out of plain sight in a locked motor vehicle, is entitled to full recovery as specified in subdivisions (1) through (4) of this subsection, inclusive. If the demand for the recovery is denied, the employee may bring a civil action in the courts of this State against the employer, business entity, or commercial enterprise and is entitled to the following:

(1) Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.

(2) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(3) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.

(4) Payment of reasonable attorneys' fees and legal costs incurred.

(f) A business, commercial enterprise, employer, or property owner that allows persons to transport or store any firearm or ammunition when the person is otherwise in compliance with all other applicable laws and regulations and the firearm or ammunition is locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle shall have complete immunity and shall not be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored in accordance with this section including, but not limited to, the theft of a firearm from an employee's automobile. Nothing contained in this section shall create a new duty on the part of any business, commercial enterprise, employer, or property owner. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises.

(g) In any action relating to the enforcement of any right or obligation under subsections (d) and (e) of this section, the reasonable, good-faith efforts of a business, commercial enterprise, employer, or property owner to comply with other applicable and irreconcilable federal or State safety laws or regulations shall be a complete defense to any liability of the business, commercial enterprise, employer, or property owner.

(h) It is the intent of this section to reinforce and protect the right of each citizen lawfully to transport and store firearms within his or her vehicle for lawful purposes in any place the vehicle is otherwise permitted to be and whenever this would not contravene existing federal or State law or regulation."

SECTION 15. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 16. G.S. 14-415.11(a) reads as rewritten:

"(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the ~~officer,~~ officer while the officer is in the performance of official duties, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer."

SECTION 17. G.S. 14-415.11 is amended by adding a new subsection to read:

"(a1) Unless otherwise prohibited by federal law, any person who has a concealed handgun permit may carry a firearm in a motor vehicle provided the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle."

SECTION 18. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 269.2, ~~14-269.3,~~ 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ or on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property."

SECTION 19. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12."

SECTION 20. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 21. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final."

SECTION 22. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 23. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 24. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record keeping purposes.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal."

SECTION 25. G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an ~~infraction and a Class 2 misdemeanor.~~infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction ~~for the first offense~~ and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine ~~for the first offense,~~ the person may surrender the permit. ~~Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.~~

~~(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor.~~"

SECTION 26. G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a

valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 27. G.S. 50B-3.1(d) reads as rewritten:

"(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section."

SECTION 28. G.S. 50B-3.1(j) reads as rewritten:

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony."

SECTION 29. Article 16 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-156. Liability protection for businesses; firearms.**

It is the intent of the General Assembly that the decision of a business, commercial enterprise, employer, or property owner, allowing persons with handgun permits to carry a handgun on such property, does not constitute an occupational safety and health hazard within the jurisdiction of this Chapter and such a business, commercial enterprise, employer, or

property owner may not be cited under any provision of Article 16 of this Chapter, including, G.S. 95-129(1), having civil penalties imposed under G.S. 95-138 or criminal penalties imposed under G.S. 95-139. The Attorney General shall intervene and defend this Section in any cause of action brought as a private right of action or by the Occupational Safety and Health Administration of the United States Department of Labor. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises."

SECTION 30. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 31. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

18 USC 922 – Unlawful Acts

(g) It shall be unlawful for any person--

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

HOUSE BILL 650

Short Title:	Amend Various Gun Laws.	(Public)
Sponsors:	Representatives Hilton, LaRoque, Cleveland, and Hastings (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used,~~ or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a ~~Class I felony~~ Class 1 misdemeanor for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a Class G felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or

other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class G felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) ~~Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed,~~ Subsection (b) of this section shall not apply to any person who possesses or carries any gun, rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school ~~if:~~in any of the following circumstances:

~~(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and~~

~~(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and~~

(1b) The person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(g) This section shall not apply to any of the following:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.

(1a) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, and North Carolina Forest Service personnel, and any private police employed by a school, when acting in the discharge of their official duties.

(3) Home schools as defined in G.S. 115C-563(a).

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.

(6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of the guard's duties with the permission of the college or university.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 2. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person willfully and intentionally to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully

completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

~~(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.~~

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a Class 2 misdemeanor."

SECTION 4. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.**

(a) ~~In accordance with G.S. 50B-3.1, it~~ It is unlawful for any ~~person~~ person, if the person has been ordered not to do so pursuant to G.S. 50B-3.1, to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms ~~if ordered by the court~~ for so long as that protective order or any successive protective order with a firearm prohibition entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor."

SECTION 5. G.S. 14-277.1 reads as rewritten:

"**§ 14-277.1. Communicating threats.**

(a) A person is guilty of a Class 1 misdemeanor if without lawful ~~authority:~~authority or justification:

(1) He willfully threatens to physically injure the person or that person's child, sibling, spouse, or dependent or willfully threatens to damage the property of another;

(2) The threat is communicated to the other person, orally, in writing, or by any other means;

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

(4) The person threatened believes that the threat will be carried out.

(b) A violation of this section is a Class 1 misdemeanor."

SECTION 6. G.S. 14-277.2 reads as rewritten:

"**§ 14-277.2. Weapons at parades, etc., prohibited.**

(a) It shall be unlawful for any person participating ~~in, affiliated with,~~ in or present as a spectator at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions to willfully or intentionally possess or have immediate access to any dangerous weapon. Violation of this subsection shall be a Class 1 misdemeanor. ~~It shall be presumed that any~~ Any rifle or gun carried on a rack in a pickup truck ~~at a holiday parade or in a funeral procession~~ or otherwise locked within a vehicle or stored in a locked container securely affixed to a vehicle does not violate the terms of this ~~act.~~section.

(b) For the purposes of this section the term "dangerous weapon" shall include those weapons specified in G.S. 14-269, 14-269.2, 14-284.1, or ~~14-288.8 or any other object capable of inflicting serious bodily injury or death when used as a weapon.~~14-288.8.

(c) The ~~provisions~~ prohibitions of this section shall not apply ~~to~~ to any of the following:

(1) ~~a~~ A person exempted by the provisions of G.S. ~~14-269(b)~~ 14-269(b).

(2) ~~or to persons~~ A person authorized by State or federal law to carry dangerous weapons in the performance of ~~their duties~~ the person's duties.

(3) ~~or to any~~ Any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place.

(4) A person who is carrying a concealed handgun and has a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24."

SECTION 7. G.S. 14-288.12(b) reads as rewritten:

"(b) The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public places, including directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, and the movement of persons within the area;

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;

(4) ~~Upon~~ Subject to G.S. 14-288.1A, upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

SECTION 8. G.S. 14-409.40 reads as rewritten:

"§ 14-409.40. Statewide uniformity of local regulation.

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by this section or other State statute, no county or municipality, or instrumentality or agent thereof, by ordinance, resolution, exercise of proprietary authority, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms

ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. ~~Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.~~However, an ordinance that is designed or enforced effectively to restrict or prohibit the sale, purchase, transfer, manufacture, or display of firearms, ammunition, or firearm accessories that are otherwise lawful under the laws of this State is in conflict with this section and is void.

(d) No county or municipality, or instrumentality or agent thereof, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, ~~including~~ or from prohibiting the possession of firearms in public-owned ~~buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas,~~ buildings, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is ~~on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.~~ in parking facilities within or attached to such buildings. A prohibition on firearms in publicly owned buildings shall not apply to business or residential lessees occupying the premises.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

SECTION 9. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:
(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and
(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.
(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 10. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by ~~G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1,~~ G.S. 14-269.2 and G.S. 14-269.4, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ or on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property."

SECTION 11. G.S. 14-415.12 reads as rewritten:

"§ 14-415.12. Criteria to qualify for the issuance of a permit.

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.
(2) The applicant is 21 years of age or older.
~~(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.~~
(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:
a. The North Carolina Criminal Justice Education and Training Standards Commission,
b. The National Rifle Association, or
c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.
(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:
(1) Is ineligible to ~~own, possess,~~ possess or receive a firearm under the provisions of State or federal law.
~~(2) Is under indictment or against whom a finding of probable cause exists for a felony.~~
~~(3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.~~
~~(4) Is a fugitive from justice.~~
~~(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.~~
~~(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.~~
~~(7) Is or has been discharged from the armed forces under conditions other than honorable.~~
~~(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1,~~

~~14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.~~

~~(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.~~

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

(c) An applicant shall not be ineligible to receive a concealed carry permit under ~~subdivision (6) of subsection (b) of~~ this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under any provision of this section."

SECTION 12. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12."

SECTION 13. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 14. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The

determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and the ~~reasonableness of the sheriff's refusal.~~ sheriff's refusal shall be sustained only if the sheriff has demonstrated that the applicant is prohibited from receiving or possessing a firearm by a provision of federal or State law, is currently the subject of criminal or other proceedings that could lead to such a prohibition, or otherwise fails to meet the criteria of this section. The determination by the court ~~shall be final.~~ is an appealable final order."

SECTION 15. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 16. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 17. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and ~~the reasonableness of the sheriff's refusal.~~ the sheriff's refusal shall be sustained only if the sheriff demonstrates that the permittee is or has become disqualified for a permit under the terms of this section."

SECTION 18. G.S. 14-415.21 is repealed.

SECTION 19. G.S. 14-415.24 reads as rewritten:

"§ 14-415.24. Reciprocity; out-of-state handgun permits.

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~ North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 20. G.S. 50B-3.1 reads as rewritten:

"§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used ~~by the sheriff to pay the costs of administering this section and for other law enforcement purposes.~~ to offset the cost of storage and in no instance may they exceed the actual storage costs. The county shall expend the restricted funds for ~~these purposes~~ this purpose only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. ~~The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.~~

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order ~~expires,~~ expires and does not otherwise find the defendant is precluded from possessing or receiving a firearm pursuant to State or federal law, the court shall enter an order directing the return of any firearms surrendered or seized pursuant to this section to the defendant, and the defendant may retrieve any weapons surrendered to the ~~sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to~~

~~State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.~~sheriff.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges for offenses alleged to have been committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any such pending criminal ~~charges committed against the person that is the subject of the current protective order.~~ charges. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.
(2) Whether the defendant is subject to any other protective orders.
(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.
(4) Whether the defendant has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order.

The court shall ~~deny the return of firearms, ammunition, or permits if~~ grant the motion unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or ~~if the defendant~~ has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items ~~by~~ by, or their surrender to, the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the ~~defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.~~defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms ~~to:~~to do any of the following:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the ~~court;~~ court.

~~(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or~~

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order with a fiream prohibition entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor.

(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 21. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 22. G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. ~~A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A.~~"

SECTION 23. G.S. 166A-3 reads as rewritten:

"**§ 166A-3. Limitations.**

Nothing in this Article shall be construed ~~to:~~to do any of the following:

(1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or ~~war; or~~ war.

(2) Limit, ~~modify or abridge~~ modify, or abridge, except as provided in subdivision (3) of this section, the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

(3) Authorize the taking, confiscation, or seizure of otherwise lawfully possessed firearms, ammunition, or components thereof or to authorize the imposition of any additional restriction or prohibition on the possession, carrying, transportation, sale, purchase, storage, or use of lawfully possessed firearms, ammunition, or ammunition components during a proclaimed state of disaster or martial law."

SECTION 24. G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement ~~officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes.~~officers."

SECTION 25. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — **Name of Committee**

May 25, 2011 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leslie Cooke	UNC
John Poland	NCAOC
Lisa Martin	NC Home Builders
Rick Zechini	
Alex Miller	KLG / NCCADV
Amanda Gladin-Kramer	Legal counsel agsin Citizens Admin. bldg
Robert Youngblood	GRNC
Joan Lamm	GRNC
Jennifer Epperson	NC DOJ
Heather Petrovich	NC DOJ
Mike Davis	The Timken Company

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — May 25, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Matt Harrell	NCSBA
Andrew Cagle	NC Sheriffs' Assn.
Connie Wilson	ECNC
Jorge Fuentes	PBV
Butch Gunnells	NC Beverage A
Kim McClees	McClees Consulting
Jim Stegall	North Carolina Alliance for Public Charter Schools
Jeff Rau	GRNC
Ben Miles	GRNC
Paul Valone	GRNC
Mike Hager	Rep.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — May 25, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	[illegible]
Adam Pridmore	NC School of Gov't
Amy Bason	NCACC
DANIEL BAUM	TROUTMAN SANDERS
John Monaghan	Piedmont Natural Gas Company
ANTHONY ROLLETTE	NRA
MIKE MANN	NRDA
Kathy Hawkins	Duke Energy
Paul Valone	Civitas

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — May 25, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Taylor	North Carolina Coalition Against Domestic Violence
Dennis Allen	NCRPA
Joe McClure	McGuireWoods
Lori Pierce	Ragsdale Liggett

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary C

DATE: 5/25/11 **Room:** 415

***Name:** Jessica Carlock
County: Stanly
Sponsor: Burr
***Name:** Hinton Edgerton
County: Johnston
Sponsor: Daughtry
***Name:**
County:
Sponsor:
***Name:**
County:
Sponsor:
***Name:**
County:
Sponsor:

House Sgt-At Arms:

1. **Name:** Bill MacRae
2. **Name:** Billy Jones
3. **Name:** Garland Shepheard
4. **Name:**
5. **Name:**
6. **Name:**

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 1, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 1, 2011, at 10:05 a.m. in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair, Representative Johnathan Rhyne, Chair; Representatives R. Brown, Dixon, Hackney, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Moore presided and called the meeting to order. Rep. Moore recognized the pages.

The following bills were considered:

HB 176, Review DV Program Participation (Representatives McLawhorn, Ross, and Farmer-Butterfield, Primary Sponsors). Chair Moore accepted a motion from Rep. R. Brown to place the Proposed Committee Substitute before the committee. Rep. McLawhorn was recognized to speak on the bill. Chair Moore recognized Rep. Weiss for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 682, Require Dom. Vio. Training/Certain Persons (Representatives McLawhorn, Farmer-Butterfield, Ross, and Lucas, Primary Sponsors). Chair Moore said the bill would not be taken up.

HB 227, Purchase of Firearms in Other States (Representatives Hollo, Gillespie, Hilton, and Jones, Jr., Primary Sponsors). Rep. Jordan presided on this bill. Rep. Jordan accepted a motion from Rep. Dixon to place the Proposed Committee Substitute before the committee. Rep. Hilton was recognized to speak on the bill. Rep. Dixon recognized Rep. Moore to speak on the bill. Rep. Moore offered an amendment that was adopted. Rep. Weiss was recognized for a motion of a favorable report to the Proposed Committee Substitute as amended and unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 706, Alimony/Postseparation Support Changes (Representative Rhyne, Jr., Primary Sponsor). Chair Moore accepted a motion from Rep. Dixon to place the Proposed Committee Substitute before the committee. Rep. Rhyne was recognized to speak on the bill. Chair Moore recognized Rep. Hackney for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority in favor, the motion carried.

HB 650, Amend Various Gun Laws (Representatives Hilton, LaRoque, Cleveland, and Hastings, Primary Sponsors). Chair Moore accepted a motion from Rep. Jordan to place the Proposed Committee Substitute before the committee. Rep. Hilton was recognized to speak on the bill. Kory Goldsmith was recognized to further explain the bill. Discussion by members. Public comments were heard from: Jeff Rau (Grassroots NC), Anthony Roulette (NRA), Mike Mann (NC Rifle and Pistol Association), Alex Miller (NC Coalition Against Domestic Violence), and

Robert Youngblood (Randolph Co. Tea Party). Rep. Hackney offered an amendment that was adopted after Ann McColl (DPI) was recognized to speak on the amendment. Discussion. Rep. Jordan made a motion for a favorable report to the Proposed Committee Substitute as amended and unfavorable to the original bill. With the majority being in favor, the motion carried.

The meeting adjourned at 10:45 a.m.

Respectfully submitted,

Representative Tim Moore
Chair

Nancy Gattiss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 1, 2011
Room 415 LOB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 176	Review DV Program Participation.	Representative McLawhorn Representative Ross Representative Farmer-Butterfield
HB 227	Purchase of Firearms in Other States.	Representative Hollo Representative Gillespie Representative Hilton Representative Jones, Jr.
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings
HB 682	Require Dom. Vio. Training/Certain Persons.	Representative McLawhorn Representative Farmer-Butterfield Representative Ross Representative Lucas
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.

ADJOURNMENT

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 1, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: HB 631 removed, HB 176, HB 682, and HB 706 added.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 176	Review DV Program Participation.	Representative McLawhorn Representative Ross Representative Farmer-Butterfield
HB 227	Purchase of Firearms in Other States.	Representative Hollo Representative Gillespie Representative Hilton Representative Jones, Jr.
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings
HB 682	Require Dom. Vio. Training/Certain Persons.	Representative McLawhorn Representative Farmer-Butterfield Representative Ross Representative Lucas
HB 706	Alimony/Postseparation Support Changes.	Representative Rhyne, Jr.

Respectfully,
Representative Tim Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at

2 PM o'clock on **May 31, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 1, 2011
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 227	Purchase of Firearms in Other States.	Representative Hollo Representative Gillespie Representative Hilton Representative Jones, Jr.
HB 631	Postconviction Release Bonds.	Representative Guice Representative Ingle Representative Faircloth, Jr.
HB 650	Amend Various Gun Laws.	Representative Hilton Representative LaRoque Representative Cleveland Representative Hastings

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **May 31, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 176 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR REVIEW OF A DEFENDANT'S PARTICIPATION IN A COURT-ORDERED ABUSER TREATMENT PROGRAM, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 227 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON MAY BUY A FIREARM IN ANOTHER STATE, PROVIDED THE PERSON SATISFIES THE APPROPRIATE BACKGROUND CHECKS.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

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_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 650 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 706 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Leo Daughtry

☒With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 176
PROPOSED COMMITTEE SUBSTITUTE H176-CSTJ-15 [v.5]

5/16/2011 6:20:47 PM

Short Title: Review DV Program Participation. (Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR REVIEW OF A DEFENDANT'S PARTICIPATION IN A COURT-ORDERED ABUSER TREATMENT PROGRAM, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE AND TO EXPAND THE TYPES OF OFFENSES REPORTED BY THE CLERK .

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(b) reads as rewritten:

"(b) Regular Conditions. – As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program. If the defendant is discharged from the program for failure to comply with the program or its rules, such noncompliance shall be reported to the court. The probation officer shall forward a copy of the judgment including all conditions of probation to the program, and the abuser treatment program shall notify the probation officer of any violations of program rules by the defendant.

(13) Submit at reasonable times to warrantless searches by a probation officer of the probationer's person and of the probationer's vehicle and premises while the probationer is present, for purposes directly related to the probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(14) Submit to warrantless searches by a law enforcement officer of the probationer's person and of the probationer's vehicle, upon a reasonable suspicion that the probationer is engaged in criminal activity or is in possession of a firearm, explosive device, or other deadly weapon listed in G.S. 14-269 without written permission of the court.

(15) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him or her by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors, or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

A defendant shall not pay costs associated with a substance abuse monitoring program or any other special condition of probation in lieu of, or prior to, the payments required by this subsection.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), (11), (13), (14), and (15) of this subsection. If a defendant placed on unsupervised probation is subject to condition (12) of this subsection, the court shall schedule a compliance review hearing within 60 days of judgment and every 60 days thereafter until the defendant completes the abuser treatment program."

SECTION 2. G.S. 15A-1382.1 reads as rewritten:

"**§ 15A-1382.1. Reports of disposition; domestic violence; sentencing.**

(a) If the court finds that a defendant is guilty of an offense, including, but not limited to acts as defined in G.S. Chapter 50B-1(a), ~~When a defendant is found guilty of an offense involving assault, or communicating a threat,~~ the presiding judge shall determine whether the defendant and victim had a personal relationship. If the judge determines that there was a personal relationship between the defendant and the victim, then the judge shall indicate on the form reflecting the judgment that the case involved domestic violence. The clerk of court shall insure that the official record of the defendant's conviction includes the court's determination, so that any inquiry into the defendant's criminal record will reflect that the offense involved domestic violence.

~~(b) If the presiding judge determines that there was a personal relationship between the defendant and the victim, and a sentence to community punishment is imposed, the judge shall determine whether the defendant shall comply with one or more of the special conditions of probation set forth at G.S. 15A-1343(b1), in addition to any other authorized punishment. Notwithstanding the provisions of G.S. 15A-1340.11(6)c, the court may require the defendant to comply with the provisions of G.S. 15A-1343(b1)(3c).~~

(b)~~(c)~~ The following definitions apply to this section:

~~(1) "An offense involving assault" includes any offense where an assault occurred, whether or not the conviction is for an offense under Article 8 of Chapter 14 of the General Statutes.~~

(1)~~(2)~~ "Inquiry" shall include any lawful review of the criminal records of persons convicted of an offense in this State, whether by law enforcement personnel or by private individuals.

(2)~~(3)~~ "Personal relationship" is as defined in G.S. 50B-1(b). (2004-186, s. 11.1.)".

SECTION 3. This act becomes effective December 1, 2011, and applies to defendants placed on probation on or after that date.

HOUSE BILL 176:
Review DV Program Participation

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 31, 2011
Introduced by:	Reps. McLawhorn, Ross, Farmer-Butterfield	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H176-CSTJ-15		

SUMMARY: The Proposed Committee Substitute to House Bill 176 would provide for court review of a defendant's participation in a court-ordered abuser treatment program, as recommended by the Joint Legislative Committee on Domestic Violence, and expand the types of offenses reported by the clerk.

CURRENT LAW: G.S. 15A-1343(12) provides that a court may order a defendant who has been found responsible for acts of domestic violence to attend and complete an abuser treatment program approved by the Domestic Violence Commission, unless the court finds that such would not be in the best interests of justice.

BILL ANALYSIS:

Sec. 1 would add to G.S. 15A-1343(b)(12), allowing the court to order a defendant to participate in an approved abuser treatment program (ATP) as a regular condition of probation, the following requirements:

- A defendant must comply with all rules of the ATP.
- The defendant's discharge from the ATP for rules noncompliance must be reported to the court.
- The defendant's probation officer (P.O.) must provide the ATP with a copy of the court order specifying the conditions of probation.
- The ATP must notify the P.O. if the defendant violates any program rules.

The PCS to HB 176 would also provide that if a defendant placed on *unsupervised* probation is ordered to attend and complete an ATP, the court is required to schedule a compliance review hearing within 60 days of the entry of judgment, and every 60 days thereafter until the defendant completes the ATP.

Sec. 2 would amend G.S. 15A-1382.1, "Reports of disposition; domestic violence; sentencing," to expand the types of offenses reported by the clerk from offenses involving assault or communicating threats to "acts as defined in G.S. Chapter 50B-1."[1] The remaining changes to this section are conforming changes.

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[1] **§ 50B-1. Domestic violence; definition.**

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7. [First-degree rape; Rape of a child by adult offender; Second-degree rape; First-degree sexual offense; Sexual offense with a child by adult offender; Second-degree sexual offense; Sexual battery; statutory rape or sexual offense.]

EFFECTIVE DATE: The act becomes effective December 1, 2011.

H176-SMTJ-45(CSTJ-15) v1

HOUSE BILL 176

Short Title:	Review DV Program Participation.	(Public)
Sponsors:	Representatives McLawhorn, Ross, and Farmer-Butterfield (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR REVIEW OF A DEFENDANT'S PARTICIPATION IN A COURT-ORDERED ABUSER TREATMENT PROGRAM, AS RECOMMENDED BY THE JOINT LEGISLATIVE COMMITTEE ON DOMESTIC VIOLENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(12) reads as rewritten:

"(12) Attend and complete an abuser treatment program if (i) the court finds the defendant is responsible for acts of domestic violence and (ii) there is a program, approved by the Domestic Violence Commission, reasonably available to the defendant, unless the court finds that such would not be in the best interests of justice. A defendant attending an abuser treatment program shall abide by all of the rules of the program. The probation officer shall forward a copy of the probation judgment to the program and request to be notified of any violations of program rules by the defendant. The court shall review the defendant's participation in the program within 30 days of a notification that the defendant has violated program rules or failed to complete the program within the specified time period for completion. The notification of the review shall be conducted according to the procedures set forth in G.S. 15A-1342(d)."

SECTION 2. This act becomes effective December 1, 2011, and applies to defendants placed on probation on or after that date.

HOUSE BILL 227:
Disturbing/Dismembering Human Remains

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 1, 2011
Introduced by:	Reps. Hollo, Gillespie, Hilton, Jones	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to First Edition H227-CSSA-49		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 227 would create new criminal offenses for disturbing human remains:***

- ***It would be a Class 1 misdemeanor to disturb, vandalize, or desecrate human remains by any means.***
- ***It would be a Class 1 misdemeanor to commit or attempt to commit any act of sexual penetration upon human remains.***
- ***It would be a Class H felony to knowingly and willfully dismember or destroy human remains in an attempt to conceal evidence of the death of another, and it would be a Class D felony to do so knowing or having reason to know the remains are of a person that did not die of natural causes.***

CURRENT LAW: G.S. 14-401.22 makes it a Class I felony to fail to notify law enforcement, or to secretly dispose of a dead human body, with the intent to conceal a person's death. Assuming no prior convictions, a Class I felony is punishable by a minimum of 3 months of community punishment.

BILL ANALYSIS: The PCS for House Bill 227 would amend G.S. 14-401.22 to create the following new offenses for disturbing, dismembering or destroying human remains:

New **subsection (c)** would make it a Class 1 misdemeanor to willfully:

- Disturb, vandalize, or desecrate human remains by any means; or
- Commit or attempt to commit an act of sexual penetration upon human remains.

The subsection would not apply to the provision of medical care; scientific or medical research, treatment, or diagnosis; standard practices of licensed funeral directors or embalmers; extraction of body parts in accordance with medical standards; professional archaeological excavation, in accordance with statute; or acts committed for any other lawful purpose. Assuming no prior convictions, a Class 1 misdemeanor is punishable by 1-45 days of community punishment.

New **subsection (d)** would make it a Class H felony to knowingly and willfully dismember or destroy human remains by any means in an attempt to conceal evidence of the death of another. Assuming no prior convictions, a Class H felony is punishable by a minimum of 4 months of community, intermediate, or active punishment.

New **subsection (e)** would make it a Class D felony to violate subsection (d) when the person knows or has reason to know that the remains are of a person who did not die of natural causes. Assuming no prior convictions, a Class D felony is punishable by a minimum of 38 months of active punishment.

EFFECTIVE DATE: The act would be effective December 1, 2011, and would apply to offenses committed on or after that date.

H227-SMSU-35(CSSA-49) v1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 227 DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Moore
)
Sen.)

1 moves to amend the bill on page 1, line 16
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "Class 1 misdemeanor" and
4 substituting "Class I felony".
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6
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 227
PROPOSED COMMITTEE SUBSTITUTE H227-PCS70225-SA-49

Short Title: Disturbing/Dismembering Human Remains. (Public)

Sponsors:

Referred to:

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO CREATE A CRIMINAL PENALTY FOR DISTURBING OR DISMEMBERING HUMAN REMAINS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-401.22 reads as rewritten:

"**§ 14-401.22. Concealment of ~~death.~~death; disturbing human remains; dismembering human remains.**

(a) Any person who, with the intent to conceal the death of a person, fails to notify a law enforcement authority of the death or secretly buries or otherwise secretly disposes of a dead human body is guilty of a Class I felony.

(b) Any person who aids, counsels, or abets any other person in concealing the death of a person is guilty of a Class A1 misdemeanor.

(c) Any person who willfully (i) disturbs, vandalizes, or desecrates human remains, by any means, including any physical alteration or manipulation of the human remains, or (ii) commits or attempts to commit upon any human remains any act of sexual penetration is guilty of a Class I felony. This subsection does not apply to:

(1) Acts by a first responder or others providing medical care.

(2) Acts committed as part of scientific or medical research, treatment, or diagnosis.

(3) Acts performed by a licensed funeral director or embalmer consistent with standard practice.

(4) Acts committed for the purpose of extracting body parts in accordance with usual and customary standards of medical practice.

(5) Acts by a professional archaeologist as defined in G.S. 70-28(4) acting pursuant to the provisions of Article 3 of Chapter 70 of the General Statutes.

(6) Acts committed for any other lawful purpose.

(d) Any person who attempts to conceal evidence of the death of another by knowingly and willfully dismembering or destroying human remains, by any means, including removing body parts or otherwise obliterating any portion thereof, shall be guilty of a Class H felony.

(e) Any person who violates subsection (d) of this section, knowing or having reason to know the human remains are of a person that did not die of natural causes, shall be guilty of a Class D felony.

(f) As used in this section, "human remains" means any dead human body in any condition of decay or any significant part of a dead human body, including any limb, organ, or bone."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 227

Short Title:	Purchase of Firearms in Other States.	(Public)
Sponsors:	Representatives Hollo, Gillespie, Hilton, and Jones (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee A.	

March 3, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON MAY BUY A FIREARM IN ANOTHER STATE, PROVIDED THE PERSON SATISFIES THE APPROPRIATE BACKGROUND CHECKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-409.10 reads as written:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Notwithstanding any other provision of law of this State, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 2. This act becomes effective December 1, 2011.

HOUSE BILL 650:
Amend Various Gun Laws/Castle Doctrine

2011-2012 General Assembly

Committee:	Senate Judiciary II	**Date:**	June 12, 2011
Introduced by:	Reps. Hilton, LaRoque, Cleveland, Hastings	**Prepared by:**	Hal Pell
Analysis of:	PCS to Third Edition H650-CSRK-104		Committee Counsel

SUMMARY: HB650 would amend numerous State laws related to the ownership and possession of guns. It would also expand the "Castle Doctrine" to apply to a motor vehicle or the workplace.

CURRENT LAW: Castle Doctrine: The General Assembly enacted G.S. 14-51.1 in 1994. Prior to the passage of the law, deadly force could only be used if the lawful occupant believed that an intruder attempting to unlawfully and forcibly enter the home might kill or inflict serious bodily injury. The common law rules of self-defense applied to someone who was already within the home. There was no right to use deadly force to protect property within the home, i.e., the lawful occupant believed that the intruder was going to commit some felony (e.g., theft) other than inflicting injury on an occupant.

G.S. 14-51.1 provides that deadly force may be used to prevent a forcible entry into the home or to terminate the unlawful entry if:

- The occupant reasonably apprehends that the intruder might kill or inflict serious bodily harm to the occupant or others; OR
- The occupant reasonably believes that the intruder intended to commit a felony in the home.

The determination is now a fact-based, subjective-objective analysis. Whether someone alleged to be an intruder had been attempting to, or had already, unlawfully and forcibly entered the home is a fact-based issue. The occupant must believe [subjective] that the intruder intended to kill or inflict serious bodily harm commit a felony. If so, is the belief reasonable [objective] under the circumstances?

BILL ANALYSIS: Castle Doctrine

Section 1 enacts **G.S. 14-51.2.** which would eliminate the "objective analysis" by stating that a person is presumed to have held a reasonable fear of death or bodily harm if both of the following apply:

1. The intruder was unlawfully and forcibly entering, or had unlawfully and forcibly entered the home, or removing or attempting to remove another from the (a question of fact), AND

2. The person using defensive force either knew or had reason to believe that an unlawful act was occurring or occurred..

The presumption stated above is rebuttable.

The statute also:

- Provides definitions for terms, and states that there is a presumption that a person held a reasonable fear of death or great bodily harm to himself or another if the two requirements listed in the statute are met. This removes the burden from the person using defensive force to prove that their belief was reasonable.
- In a criminal case, if the defendant asserts the use of justifiable force as a defense to the charge, then the prosecutor has the burden of proof by producing evidence which disproves the defense beyond a reasonable doubt. In a civil action where the person who used

defensive force was the defendant, the plaintiff would have the burden in a civil action to prove that the fear was not reasonable.

- The act contains a list of exceptions to the presumption. The exceptions include circumstances where the person against whom the defensive force is used was a lawful resident, and there was no court order providing for non-contact by that person; the person being removed was a child or grandchild, or was in the lawful custody of the person removing them; the person using defensive force was furthering a criminal offense that involved the use of force; a law enforcement officer or bail bondsman was the person against whom the force was used; and the person against whom the force was used had discontinued efforts to unlawfully enter and had exited the dwelling.
- The act also provides that a person who unlawfully and by force enters, or attempts to enter the specified locations is presumed to be doing so with the intent to commit an unlawful act involving force or violence.
- A person who justifiably uses force as provided in the section is immune from criminal prosecution and civil action. An exception to this immunity is where the force was used against a law enforcement officer or bail bondsman acting in the performance of duties and who identified himself or herself, or the person using force knew or reasonably should have known that the person was a law enforcement officer.
- The act provides that a person in any of the specified locations has no duty to retreat, which is consistent with the current law in relation to the home.

Section 1 enacts **G.S. 14-51.3 – Use of force in defense of person; relief from criminal or civil liability,** a "stand your ground" provision. A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

(2) Under the circumstances permitted above in G.S. 14 51.2. (use of force occurs in the home, motor vehicle, or workplace).

This provision does not contain a presumption, i.e., the use of defensive force will be just on what is considered objectively reasonable for the purposes of defense. The use of deadly force would come under the previous rules that applied in the home, i.e., the person must have a reasonable belief that the force was necessary to prevent imminent death or serious bodily harm to himself or herself, or another. However, the use of deadly force to prevent a felony (which is in the current "castle doctrine" as it pertains to the home) is not included in the act. The provision contains a provision concerning immunity from civil or criminal liability that is similar to the one contained in G.S. 14-51.2, above.

Section 1 also enacts **G.S. 14-51.4 – Justification for defensive force not available** which provides that the justifications for the use of defensive force if the person using the force (1) was attempting to commit a crime or escaping after the commission of a crime; or (2) provoked the use of force. However, even if the person initially provoked the use of force, he or she may still use defensive force if certain conditions are met.

Section 2 repeals G.S. 14-51.1, the current law regarding use of deadly physical force against an intruder. The bill repeals the current "Castle Doctrine" statute.

CURRENT LAW: Possession and carrying concealed weapons

G.S. 14-269(a) makes it unlawful for any individual to willfully and intentionally carry concealed about their person any of the following: bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, and other deadly weapon.

G.S. 14-269(a1) makes it unlawful to carry concealed a pistol or gun, unless it is on the individual's property, the individual has a concealed carry permit, or is a military permittee. Violation is a misdemeanor. The prohibition does not apply to ordinary pocket knives.

G.S. 14-269(b) provides that the prohibitions against carrying a concealed weapon do not apply to any of the following individuals:

1. Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties and acting under orders requiring them to carry arms and weapons.
2. Civil and law enforcement officers of the United States.
3. Officers and soldiers of the militia and the National Guard when called into actual service.
4. Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties.
5. Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

The individuals listed in #1-5 above are also exempt from the following statutory provisions. Persons who hold a concealed carry permit are subject to these provisions.

- **G.S. 14-269.2.** Weapons on campus or other education property.
- **G.S. 14-269.3.** Carrying weapons into assemblies and establishments where alcoholic beverages are sold and consumed.
- **G.S. 14-269.4.** Weapons on State property and courthouses.
- **G.S. 14-277.2.** Weapons at parades, etc.
- **G.S. 14-288.7.** Transporting dangerous weapon or substance during emergency; possessing off premises; exceptions.
- **G.S. 14-288.8.** Manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of weapon of mass death and destruction; exceptions.
- **G.S. 14-288.21.** Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; punishment.

BILL ANALYSIS: Amendments to various gun laws

Section 3 amends G.S. 14-269(b) regarding those individuals who may carry a concealed weapon when not on that individual's property. It would add a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney, and a qualified retired law enforcement officer who is certified by the North Carolina Criminal Justice Education and Training Standards Commission

provided the person is not consuming, or have remaining in the officer's body, alcohol or an unlawful controlled substance.

G.S. 14-415.10(4b) defines a qualified retired law enforcement officer as an individual who meets all of the following qualifications:

a. Retired in good standing from service with a public agency located in the United States as a law enforcement officer, other than for reasons of mental instability.

b. Prior to retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of, any person for any violation of law, and had statutory powers of arrest.

c. Prior to retirement, was regularly employed as a law enforcement officer for a total of 15 years or more, or retired after completing probationary periods of service due to a service connected disability, as determined by the agency.

d. Has a vested right to benefits under the retirement plan of the agency.

Section 4 would add a requirement of "knowing" possession on educational property.

Section 5 would amend G.S. 14-269.4 (Weapons on State Property and in courthouses) to exempt individuals who hold a valid permit to carry a concealed weapon if the firearm is in a closed container within a locked motor vehicle or in a located container securely affixed to the person's vehicle.

Section 6 would add the "knowingly and intentionally" requirement to the prohibition that persons under the age of 18 may not possess or carry a handgun. It would also increase the penalty for violation from a Class 2 to a Class 1 misdemeanor.

Sections 7, 23, and 24 would amend G.S. 14-269.9 (Purchase or possession of firearms by person subject to domestic violence order prohibited) and G.S. 50B-3.1 (Surrender and disposal of firearms; violations; exemptions) to clarify that a person who is subject to a 50B order may own, but not possess, a firearm during the pendency of the order.

Sections 8 and 9 would allow a person to possess a weapon of mass death and destruction or a machine gun if that person possesses and owns the weapons in compliance with federal law. The definitions for these weapons are included at the end of this summary.

Section 10 amends G.S. 14-404(d). This provision exempts law enforcement officers from the requirement obtain a purchase permit prior to purchasing a firearm. The amendment removes the requirement that the purchase be directly related to the law officer's official duties, and specifies the type of documentation that is required.

Section 11 makes it a Class F felony to knowingly solicit, persuade, encourage or entice a licensed dealer or private sell of firearms or ammunition to transfer the firearm or ammunition if the person knows the transfer will violate State or federal law. It would also be a Class F felony to provide materially false information to a licensed dealer or private sell of firearms or ammunition with the intent to deceive dealer about the legality of the transfer.

Section 12 clarifies current law regarding the out-of-state purchase of a firearm, and expands purchase to all states (not just contiguous states).

Section 13 amends G.S. 14-415.1 (Possession of firearms, etc., by felon prohibited) to allow a person who is pardoned or whose firearms rights have been restored to be eligible to possess a firearm.

Section 14 makes conforming changes, and adds provisions which preclude carrying a concealed weapon on any private grounds where a sign has been posted to prohibit it; specifies that concealed handgun permit holders may carry concealed on the grounds or waters of any State park; at any State owned rest area, at any State owned rest stop along the highways, and at any State owned hunting and fishing reservation.

Section 15 limits the permissible use of a release of mental health records, but clarifies the information may be included in NICS submissions

Section 16 makes a technical change.

Section 17 reduces, from 90 to 45 days, the amount of time a sheriff has to renew a concealed carry permit. However, the 45 days is measured from the time the sheriff receives the required records concerning mental health or competency of the applicant.

Section 18 removes the requirement to provide fingerprints for a renewal application.

Section 19 removes social security numbers from the list of identifying information a sheriff must keep related to concealed carry permittees.

Section 20 clarifies the grounds upon which a sheriff may revoke a concealed carry permit for misuse of the permit. A permit hold may not give a duplicate permit to another person unless that person is a vender and the duplicate is for record keeping purposes.

Section 21.(a) reduces the penalty for second and subsequent offenses involving the failure of a concealed carry permit holder to carry the permit when also carrying a concealed weapon, or for failing to inform a law enforcement officer that the permittee is carrying a concealed weapon.

Section 21.(b) limits local government ability to prohibit concealed handguns at recreational facilities. Local governments can adopt ordinance only for specific types of facilities: a playground, an athletic field, a swimming pool, and an athletic facility. If an ordinance is adopted, it must include a provision allowing the concealed handgun permittee to secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle.

Section 22.(a) makes North Carolina's concealed carry reciprocity statute a pure recognition statute.

Section 22.(b) authorizes a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit is not subject to the restrictions and prohibitions set out in G.S. 14 415.11(c).

Sections 23 and 24 (See Section 7)

Section 25 prohibits the Legislative Services Commission from adopting a rule that would prohibit the transportation or storage of a firearm in a locked vehicle when the vehicle is parked on the Legislative Complex. Authorizes legislators and legislative employees to transport and keep firearms in their vehicles while parked in State-leased parking spaces if the firearms are in a closed compartment or container or securely affixed to the vehicle.

EFFECTIVE DATE: This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before that date are not abated.

Kory Goldsmith, Staff Attorney, substantially contributed to this summary.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 650
Committee Substitute Favorable 6/2/11
Third Edition Engrossed 6/7/11
PROPOSED SENATE COMMITTEE SUBSTITUTE H650-CSRK-104 [v.3]

6/12/2011 5:13:37 PM

Short Title: Amend Various Gun Laws/Castle Doctrine. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE WHEN A PERSON MAY USE DEFENSIVE FORCE AND TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.**

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer or bail bondsman who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

"**§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.
(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force unless the person against whom force was used is a law enforcement officer or bail bondsman who was lawfully acting in the performance of his or her official duties and the officer or bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer or bail bondsman in the lawful performance of his or her official duties."

"**§ 14-51.4. Justification for defensive force not available.**

The justification described in G.S. 14-51.2 and G.S. 14-51.3 is not available to a person who used defensive force and who:

(1) Was attempting to commit, committing, or escaping after the commission of a felony.
(2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if either of the following occur:
a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger.
b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. G.S. 14-269 reads as rewritten:

"**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.
(2) The deadly weapon is a handgun, ~~and~~ the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24.~~G.S. 14-415.24, and the person is carrying the concealed handgun in accordance with the scope of the concealed handgun permit as set out in G.S. 14-415.11(c).
(3) The deadly weapon is a handgun and the person is a military permittee as defined under G.S. 14-415.10(2a) who provides to the law enforcement officer proof of deployment as required under G.S. 14-415.11(a).

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
(2) Civil and law enforcement officers of the United States;
(3) Officers and soldiers of the militia and the National Guard when called into actual service;
(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;
(4a) Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or investigator;
(4b) Any person who meets all of the following conditions:
a. Is a qualified retired law enforcement officer as defined in G.S. 14-415.10.
b. Is the holder of a concealed handgun permit in accordance with Article 54B of Chapter 14 of the North Carolina General Statutes.
c. Is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26.
(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

. . . ."

SECTION 4. G.S. 14-269.2(b) reads as rewritten:

(b) It shall be a Class I felony for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

SECTION 5. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on certain State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,
(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 6. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a ~~Class 2~~ Class 1 misdemeanor."

SECTION 7. G.S. 14-269.8(a) reads as rewritten:

"(a) In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect."

SECTION 8. G.S. 14-288.8(b) reads as rewritten:

"(b) This section does not apply ~~to:~~to any of the following:

(1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(5) Persons who lawfully possess or own a weapon as defined in subsection (c) of this section in compliance with 26 U.S.C. Chapter 53, §§ 5801-5871. Nothing in this subdivision shall limit the discretion of the sheriff in executing the paperwork required by the United States Bureau of Alcohol, Tobacco and Firearms for such person to obtain the weapon."

SECTION 9. G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is ~~located.~~ located; a person who lawfully possesses or owns a weapon as defined by subsection (a) of this section in compliance with 26 U.S.C. Chapter 53, §§ 5801-5871. Nothing in this subdivision shall limit the discretion of the sheriff in executing the paperwork required by the United States Bureau of Alcohol, Tobacco and Firearms for such person to obtain the weapon. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

SECTION 10. G.S. 14-404(d) reads as rewritten:

"(d) Nothing in this Article shall apply to officers authorized by law to carry firearms if the officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and ~~state that the purpose for the purchase of the firearms is directly related to the law officers' official duties.~~provide any of the following:

(1) A letter signed by the officer's supervisor or superior officer stating that the officer is authorized by law to carry a firearm.

(2) A current photographic identification card issued by the officer's employer.

(3) A current photographic identification card issued by a State agency that identifies the individual as a law enforcement officer certified by the State of North Carolina.

(4) A current identification card issued by the officer's employer and another form of current photographic identification."

SECTION 11. Article 53A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.**

(a) The following definitions apply in this section:

(1) Ammunition. – Any cartridge, shell, or projectile designed for use in a firearm.

(2) Firearm. – A handgun, shotgun, or rifle which expels a projectile by action of an explosion.

(3) Handgun. – A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

(4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to engage in the business of dealing in firearms.

(5) Materially false information. – Information that portrays an illegal transaction as legal or a legal transaction as illegal.

(6) Private seller. – A person who sells or offers for sale any firearm, as defined in G.S. 14-409.39, or ammunition.

(b) Any person who knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States is guilty of a Class F felony.

(c) Any person who provides to a licensed dealer or private seller of firearms or ammunition information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.

(d) Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

(e) This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of the law enforcement officer."

SECTION 12. G.S. 14-409.10 reads as written:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Unless otherwise prohibited by law, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 13. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored if such restoration of rights could also be granted under North Carolina law.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 14. G.S. 14-415.11 reads as rewritten.

"**§ 14-415.11. Permit to carry concealed handgun; scope of permit.**

(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer.

(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of five years from the date of issuance.

(c) ~~A~~ Except as provided in G.S. 14-415.27, a permit does not authorize a person to carry a concealed handgun in any of the following:

(1) ~~areas~~ Areas prohibited by ~~G.S. 269.2, 14-269.3, 14-269.4, and 14-277.2;~~G.S. 14-269.2, G.S. 14-269.3 and G.S. 14-277.2.

(2) Areas prohibited by G.S. 14-269.4, except as allowed under G.S. 14-269.4(6).

(3) ~~in~~ In an area prohibited by rule adopted under ~~G.S. 120-32.1;~~G.S. 120-32.1.

(4) ~~in~~ In any area prohibited by 18 U.S.C. § 922 or any other federal ~~law;~~law.
(5) ~~in~~ In a law enforcement or correctional ~~facility;~~ facility.
(6) ~~in~~ In a building housing only State or federal ~~offices;~~ offices.
(7) ~~in~~ In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal ~~government;~~government.
(8) ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways;~~ On any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises.

(c1) Any person who has a concealed handgun permit may carry a concealed handgun on the grounds or waters of a park within the State Parks System as defined in G.S. 113-44.9.

(c2) It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in ~~his~~ the person's body any alcohol or in ~~his~~ the person's blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in ~~his~~ the person's blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property.

(c3) As provided in G.S. 14-269.4(5), it shall be lawful for a person to carry any firearm openly, or to carry a concealed handgun with a concealed carry permit, at any State-owned rest area, at any State-owned rest stop along the highways, and at any State-owned hunting and fishing reservation.

(d) A person who is issued a permit shall notify the sheriff who issued the permit of any change in the person's permanent address within 30 days after the change of address. If a permit is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who issued the permit of the loss or destruction of the permit. A person may obtain a duplicate permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed and paying the required duplicate permit fee."

SECTION 15. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12. This provision does not prohibit submitting information related to involuntary commitment to the National Instant Criminal Background Check System (NICS)."

SECTION 16. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 17. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final."

SECTION 18. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 19. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 20. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record-keeping purposes.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal."

SECTION 21.(a) G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an ~~infraction and a Class 2 misdemeanor.~~ infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction ~~for the first offense~~ and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine ~~for the first offense,~~ the person may surrender the permit. ~~Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.~~

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor."

SECTION 21.(b) G.S. 14-415.23 reads as rewritten:

"**§ 14-415.23. Statewide uniformity.**

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards,

or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government ~~buildings, their appurtenant premises, and parks.~~buildings and their appurtenant premises. A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle. For purposes of this section, the term "recreational facilities" includes only the following: a playground, an athletic field, a swimming pool, and an athletic facility."

SECTION 22.(a) G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 22.(b) Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.27. Expanded permit scope for district attorneys, assistant district attorneys, and investigators employed by office of the district attorney.**

Notwithstanding G.S. 14-415.11(c), any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the restrictions and prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law."

SECTION 23. G.S. 50B-3.1(d) reads as rewritten:

"(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff

within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section."

SECTION 24. G.S. 50B-3.1(j) reads as rewritten:

"(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony."

SECTION 25. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 26. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 650

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

H650-ARK-93 [v.1]

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

Date _____,2011

Senator Daniel

moves to amend the bill on page 4, between lines ~~22~~ 26 and ~~23~~ 27, by inserting the following:

"(4c) Detention personnel or correctional officers employed by the State or a unit of local government who park a vehicle in a space that is authorized for their use in the course of their duties may transport a firearm to the parking space and store that firearm in the vehicle parked in the parking space, provided that: (i) the firearm is in a closed compartment or container within the locked vehicle, or (ii) the firearm is in a locked container securely affixed to the vehicle."

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. 650 DATE 6/1/2011

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Hackney
Sen.)

1 moves to amend the bill on page 4, line 21
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "willfully and intentionally" and
4 substituting "knowingly".
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 650
PROPOSED COMMITTEE SUBSTITUTE H650-CSRC-32 [v.6]

6/1/2011 9:45:14 AM

Short Title: Amend Various Gun Laws. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE WHEN A PERSON MAY USE DEFENSIVE FORCE AND TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.**

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer. The term "law enforcement officer" shall include a duly authorized bail bondsman, or his or her employee, who is acting under lawful authority.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, the home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption provided in subsection (b) of this section shall be rebuttable if the use of defensive force occurs in a motor vehicle or a workplace. The presumption set forth in subsection (b) of this section does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a minor child or minor grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

"**§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or herself or another.

(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

"**§ 14-51.4. Justification for defensive force not available.**

The justification described in G.S. 14-51.2, and 14-51.3 is not available to a person who used defensive force and who:

(1) Was attempting to commit, committing, or escaping after the commission of a felony.

(2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if:

a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger.

b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the National Guard when called into actual service;

(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(4a) Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26; provided that the person shall not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful

controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 4. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used, or~~ operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a Class I felony for any person willfully and intentionally to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol

(b1) It shall be a Class G felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class G felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a Class 1 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a Class 1 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies,

unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) Notwithstanding subsection (b) of this ~~section~~ section and except as provided in subsection (f1) of this section, it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school if:

(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and

(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(f1) It shall not be a violation of either subsection (b) or (f) of this section for any person to possess or carry a firearm on educational property or to a curricular or extracurricular activity sponsored by a school if the person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

(g) This section shall not apply to any of the following:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.

(1a) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, and North Carolina Forest Service personnel, and any private police employed by a school, when acting in the discharge of their official duties.

(3) Home schools as defined in G.S. 115C-563(a).

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.

(6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility

located on educational property when acting in the discharge of the guard's duties with the permission of the college or university.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 5. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on certain State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm remains

in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 6. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a ~~Class 2~~ Class 1 misdemeanor."

SECTION 7. G.S. 14-269.8(a) reads as rewritten:

"(a) In accordance with G.S. 50B-3.1, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect."

SECTION 8. G.S. 14-288.8(b) reads as rewritten:

"(b) This section does not apply ~~to:~~to any of the following:

(1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(5) Persons who lawfully possess or own a weapon as defined in subsection (c) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871."

SECTION 9. G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is ~~located.~~ located; a person who lawfully possesses or owns a weapon as defined by subsection (a) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without

violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

SECTION 10. G.S. 14-404(d) reads as rewritten:

"(d) Nothing in this Article shall apply to officers authorized by law to carry firearms if the officers identify themselves to the vendor or donor as being officers authorized by law to carry firearms and ~~state that the purpose for the purchase of the firearms is directly related to the law officers' official duties.~~provide any of the following:

(1) A letter signed by the officer's supervisor or superior officer stating that the officer is authorized by law to carry a firearm.

(2) A current photographic identification card issued by the officer's employer.

(3) A current photographic identification card issued by a State agency that identifies the individual as a law enforcement officer certified by the State of North Carolina.

(4) A current identification card issued by the officer's employer and another form of current photographic identification."

SECTION 11. Article 53A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.**

(a) The following definitions apply in this section:

(1) Ammunition. – Any cartridge, shell, or projectile designed for use in a firearm.

(2) Firearm. – A handgun, shotgun, or rifle which expels a projectile by action of an explosion.

(3) Handgun. – A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

(4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to engage in the business of dealing in firearms.

(5) Materially false information. – Information that portrays an illegal transaction as legal or a legal transaction as illegal.

(6) Private seller. – A person who sells or offers for sale any firearm, as defined in G.S. 14-409.39, or ammunition.

(b) Any person who knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States is guilty of a Class F felony.

(c) Any person who provides to a licensed dealer or private seller of firearms or ammunition information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.

(d) Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

(e) This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of the law enforcement officer."

SECTION 12. G.S. 14-409.10 reads as written:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Notwithstanding any other provision of law of this State, a citizen of this State may purchase a firearm in another state if the citizen undergoes a

background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 13. Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-409.41. No prohibition regarding the transportation or storage of a firearm in locked motor vehicle by business, commercial enterprise, or employer; civil liability; enforcement.**

(a) As used in this section, the term "motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under Chapter 20 of the General Statutes.

(b) A business, commercial enterprise, or employer shall not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition when the person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24, is otherwise in compliance with all other applicable laws and regulations, and the firearm or ammunition is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle. A person may unlock the vehicle to enter or exit the vehicle provided the firearm or ammunition remain in the closed compartment at all times and the vehicle is locked immediately following the entrance or exit.

(c) Subsection (b) of this section shall not apply to the following:

(1) Vehicles owned or leased by an employer.

(2) Where transport or storage of a firearm is prohibited by State or federal law or regulation.

(d) A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (b) of this section may bring a civil action in the appropriate court against any business entity, commercial enterprise, or employer who committed or caused such violation. A person who would be entitled legally to transport or store a firearm or ammunition, but who would be denied the ability to transport or store a firearm or ammunition by a policy in violation of subsection (b) of this section, may bring a civil action in the appropriate court to enjoin any business entity, commercial enterprise, or employer from violating subsection (b) of this section.

(e) An employee discharged by an employer, business entity, or commercial enterprise for violation of a policy or rule prohibited under subsection (b) of this section, when he or she was lawfully transporting or storing a firearm out of plain sight in a locked motor vehicle, is entitled to full recovery as specified in subdivisions (1) through (4) of this subsection, inclusive. If the demand for the recovery is denied, the employee may bring a civil action in the courts of this State against the employer, business entity, or commercial enterprise and is entitled to the following:

(1) Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.

(2) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(3) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.

(4) Payment of reasonable attorneys' fees and legal costs incurred.

(f) A business, commercial enterprise, employer, or property owner that allows persons to transport or store any firearm or ammunition pursuant to subsection (b) of this section shall have complete immunity and shall not be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored in accordance with this section including, but not limited to,

the theft of a firearm from an employee's automobile. Nothing contained in this section shall create a new duty on the part of any business, commercial enterprise, employer, or property owner. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises.

(g) In any action relating to the enforcement of any right or obligation under subsections (d) and (e) of this section, the reasonable, good-faith efforts of a business, commercial enterprise, employer, or property owner to comply with other applicable and irreconcilable federal or State safety laws or regulations shall be a complete defense to any liability of the business, commercial enterprise, employer, or property owner."

SECTION 14. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 15. G.S. 14-415.11(a) reads as rewritten:

"(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the ~~officer,~~ officer while the officer is in the performance of official duties, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer."

SECTION 16. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in any of the following:

(1) ~~areas~~ Areas prohibited by ~~G.S. 269.2, 14-269.3, 14-269.4, and 14-277.2,~~ G.S. 14-269.3 and 14-277.2.

(2) Areas prohibited by G.S. 269.2, except as allowed under G.S. 269.2(f1).

(3) Areas prohibited by G.S. 269.4, except as allowed under G.S. 269.4(6)/

(4) ~~in~~ In an area prohibited by rule adopted under ~~G.S. 120-32.1,~~ G.S. 120-32.1.

(5) ~~in~~ In any area prohibited by 18 U.S.C. § 922 or any other federal ~~law;~~ law.

(6) ~~in~~ In a law enforcement or correctional ~~facility;~~ facility.

(7) ~~in~~ In a building housing only State or federal ~~offices,~~ offices, except as allowed under G.S. 14-409.41.

(8) ~~in~~ In an office of the State or federal government that is not located in a building exclusively occupied by the State or federal ~~government;~~ government, except as allowed under G.S. 14-409.41.

(9) ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ Except as provided in G.S. 14-409.41, on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises.

It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in ~~his~~ the person's body any alcohol or in ~~his~~ the person's blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in ~~his~~ the person's blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~ amounts or if the person is on the person's own property.

It shall be lawful for a person with a permit to carry a concealed handgun at any state-owned rest area or state-owned rest stop along the highways."

SECTION 17. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~ applicant to be

used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12. This provision does not prohibit submitting information related to involuntary commitment to the National Instant Criminal Background Check System (NICS)."

SECTION 18. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 19. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final."

SECTION 20. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the

permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 21. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 22. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record keeping purposes.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal."

SECTION 23. G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an ~~infraction and a Class 2 misdemeanor.~~ infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any

law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction ~~for the first offense~~ and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine ~~for the first offense,~~ the person may surrender the permit. ~~Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.~~

~~(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor.~~"

SECTION 24. G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 25. G.S. 50B-3.1(d) reads as rewritten:

"(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the

costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section."

SECTION 26. G.S. 50B-3.1(j) reads as rewritten:

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony."

SECTION 27. Article 16 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-156. Liability protection for businesses; firearms.**

It is the intent of the General Assembly that the decision of a business, commercial enterprise, employer, or property owner, allowing persons with handgun permits to carry a handgun on such property, does not constitute an occupational safety and health hazard within the jurisdiction of this Chapter and such a business, commercial enterprise, employer, or property owner may not be cited under any provision of Article 16 of this Chapter, including, G.S. 95-129(1), having civil penalties imposed under G.S. 95-138 or criminal penalties imposed under G.S. 95-139. The Attorney General shall intervene and defend this Section in any cause of action brought as a private right of action or by the Occupational Safety and Health Administration of the United States Department of Labor. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises."

SECTION 28. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 29. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Concealed Carry -- Handgun Reference Chart

Prohibited Carry Area	NC Sworn Officer GS 14-269	Out-of-State Officer HR 218	Retired Officer HR 218	Concealed Carry Handgun Permittee GS 14-415.10	Out-of-State Reciprocal Concealed Carry Handgun
Educational Property	YES	YES--If Private Property* NO--If Govt. Property	YES--If Private Property* NO--If Govt. Property	NO	
Where Alcoholic Beverages are sold and consumed	YES	YES--If Private Property* NO--If Govt. Property	YES--If Private Property* NO--If Govt. Property	NO	
State Property & Courthouses (This does not address Legislative office properties.)	YES	NO	NO	NO	
Parades, Picket lines, Private Health Care Facilities	YES	YES*	YES*	NO	
Posted Property	YES	NO	NO	NO	
Law Enforcement or Correctional Facility	YES	NO	NO	NO	
Federal Property	NO	NO	NO	NO	
Financial Institutions (Banks, Savings & Loans, etc.)	YES	YES--If Private Property* NO--If Govt. Property	YES--If Private Property* NO--If Govt. Property	NO	
While consuming alcohol or while alcohol or controlled substance is in the blood	NO	YES	YES	NO	
Assembly where admission is charged	YES	YES--If Private Property* NO--If Govt. Property	YES--If Private Property* NO--If Govt. Property	NO	

A "yes" in the block indicates the officer in that category can carry in the establishment listed.
A "no" in the block indicates the officer in that category cannot carry in the establishment listed.

A "*" beside the answer indicates the officer in that category can carry unless the owner or person in charge of the premises has indicated a desire for weapons not to be carried on the premises, for example by way of posting a sign to that effect.

NOTE: Officers carrying pursuant to G.S. 14-269 may not consume alcohol while carrying.
Officers carrying pursuant to HR218 may not be under the influence of alcohol while carrying.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 650
PROPOSED COMMITTEE SUBSTITUTE H650-CSRC-30 [v.4]

5/25/2011 9:33:26 AM

Short Title: Amend Various Gun Laws/Castle Doctrine. (Public)

Sponsors:

Referred to:

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE WHEN A PERSON MAY USE DEFENSIVE FORCE AND TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.**

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer. The term "law enforcement officer" shall include a duly authorized bail bondsman, or his or her employee, who is acting under lawful authority.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, the home, motor vehicle, or workplace, or if that person had removed or was attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption provided in subsection (b) of this section shall be rebuttable if the use of defensive force occurs in a motor vehicle or a workplace. The presumption set forth in subsection (b) of this section does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a minor child or minor grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

"**§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or herself or another.
(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

"**§ 14-51.4. Justification for defensive force not available.**

The justification described in G.S. 14-51.2, and 14-51.3 is not available to a person who used defensive force ~~and who~~and who:

(1) Was attempting to commit, committing, or escaping after the commission of a felony.
(2) Initially provokes the use of force against himself or herself. However, the person who initially provokes the use of force against himself or herself will be justified in using defensive force if:
a. The force used by the person who was provoked is so serious that the person using defensive force reasonably believes that he or she was in imminent danger of death or serious bodily harm, the person using defensive force had no reasonable means to retreat, and the use of force which is likely to cause death or serious bodily harm to the person who was provoked was the only way to escape the danger.
b. The person who used defensive force withdraws, in good faith, from physical contact with the person who was provoked, and indicates clearly that he or she desires to withdraw and terminate the use of force, but the person who was provoked continues or resumes the use of force."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. G.S. 14-269(b) reads as rewritten:

"(b) This prohibition shall not apply to the following persons:
(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
(2) Civil and law enforcement officers of the United States;
(3) Officers and soldiers of the militia and the National Guard when called into actual service;
(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;
(4a) Any person who is a qualified retired law enforcement officer as defined in G.S. 14-415.10 and is certified by the North Carolina Criminal Justice Education and Training Standards Commission pursuant to G.S. 14-415.26; provided that the person shall not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body;
(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful

controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body."

SECTION 4. Subsections (a) and (b) of G.S. 14-269.2(a) and (b) read as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used,~~ or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a Class I felony for any person willfully and intentionally to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol."

SECTION 5. G.S. 14-269.2 is amended by adding a new subsections to read:

"(f1) It shall not be a violation of subsection (b) of this section for a person to possess or carry a firearm on educational property or to a curricular or extracurricular activity sponsored by a school if the person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle."

SECTION 6. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 7. G.S. 14-269.7(a) reads as rewritten:

"(a) Any minor who willfully and intentionally possesses or carries a handgun is guilty of a ~~Class 2~~ Class 1 misdemeanor."

SECTION 8. G.S. 14-269.8(a) reads as rewritten:

"(a) ~~In accordance with G.S. 50B-3.1, it~~ It is unlawful for any ~~person~~ person, if the person has been ordered not to do so pursuant to G.S. 50B-3.1, to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms ~~if ordered by the court~~ for so long as that protective order or any successive protective order entered against that person pursuant to Chapter 50B of the General Statutes is in effect."

SECTION 9. G.S. 14-288.8(b) reads as rewritten:

"(b) This section does not apply ~~to:~~to any of the following:

(1) Persons exempted from the provisions of G.S. 14-269 with respect to any activities lawfully engaged in while carrying out their duties.

(2) Importers, manufacturers, dealers, and collectors of firearms, ammunition, or destructive devices validly licensed under the laws of the United States or the State of North Carolina, while lawfully engaged in activities authorized under their licenses.

(3) Persons under contract with the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts.

(4) Inventors, designers, ordnance consultants and researchers, chemists, physicists, and other persons lawfully engaged in pursuits designed to enlarge knowledge or to facilitate the creation, development, or manufacture

of weapons of mass death and destruction intended for use in a manner consistent with the laws of the United States and the State of North Carolina.

(5) Persons who lawfully possess or own a weapon as defined in subsection (c) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871."

SECTION 10. G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is ~~located.~~ located; a person who lawfully possesses or owns a weapon as defined by subsection (a) of this section in compliance with 26 U.S.C. Chapter 53, §§5801-5871. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

SECTION 11. G.S. 14-402(a), as amended by Section 1 of S.L. 2011-56 reads as rewritten:

"§ 14-402. Sale of certain weapons without permit forbidden.

(a) It is unlawful for any person, firm, or corporation in this State to sell, give away, or transfer, or to purchase or receive, at any place within this State from any other place within or without the State any pistol bow unless: (i) a license or permit is first obtained under this Article by the purchaser or receiver from the sheriff of the county in which the purchaser or receiver resides; ~~or~~ (ii) a valid North Carolina concealed handgun permit is held under Article 54B of this Chapter by the purchaser or receiver who must be a resident of the State at the time of the ~~purchase.~~ purchase; or (iii) the purchaser or receiver is a sworn law-enforcement officer who has been certified by the North Carolina Criminal Justice Education and Training Standards Commission.

It is unlawful for any person or persons to receive from any postmaster, postal clerk, employee in the parcel post department, rural mail carrier, express agent or employee, railroad agent or employee within the State of North Carolina any pistol without having in his or their possession and without exhibiting at the time of the delivery of the same and to the person delivering the same the permit from the sheriff as provided in G.S. 14-403. Any person violating the provisions of this section is guilty of a Class 2 misdemeanor."

SECTION 12. Article 53A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.**

(a) The following definitions apply in this section:

(1) Ammunition. – Any cartridge, shell, or projectile designed for use in a firearm.

(2) Firearm. – A handgun, shotgun, or rifle which expels a projectile by action of an explosion.
(3) Handgun. – A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.
(4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to engage in the business of dealing in firearms.
(5) Materially false information. – Information that portrays an illegal transaction as legal or a legal transaction as illegal.
(6) Private seller. – A person who sells or offers for sale any firearm, as defined in G.S. 14-409.39, or ammunition.

(b) Any person who knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States is guilty of a Class F felony.

(c) Any person who provides to a licensed dealer or private seller of firearms or ammunition information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.

(d) Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

(e) This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of the law enforcement officer."

SECTION 13. G.S. 14-409.10 reads as written:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Notwithstanding any other provision of law of this State, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 14. Article 53B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-409.41. No prohibition regarding the transportation or storage of a firearm in locked motor vehicle by business, commercial enterprise, or employer; civil liability; enforcement.**

(a) As used in this section, the term "motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, and any other vehicle required to be registered under Chapter 20 of the General Statutes.

(b) A business, commercial enterprise, or employer shall not establish, maintain, or enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition when the person is otherwise in compliance with all other applicable laws and regulations and the firearm or ammunition is locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle.

(c) Subsection (b) of this section shall not apply to the following:
(1) Vehicles owned or leased by an employer.
(2) Where transport or storage of a firearm is prohibited by State or federal law or regulation.

(c1) Notwithstanding subsection (b) of this section, a public utility as defined in G.S. 62-3 may establish, maintain, and enforce a policy or rule that prohibits or has the effect of prohibiting a person from transporting or storing any firearm or ammunition on property used in the generation or control of electricity. This subsection shall not apply to a handgun that is

locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle by a person who has a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24.

(d) A person who is injured or incurs damages, or the survivors of a person killed, as a result of a violation of subsection (b) of this section may bring a civil action in the appropriate court against any business entity, commercial enterprise, or employer who committed or caused such violation. A person who would be entitled legally to transport or store a firearm or ammunition, but who would be denied the ability to transport or store a firearm or ammunition by a policy in violation of subsection (b) of this section, may bring a civil action in the appropriate court to enjoin any business entity, commercial enterprise, or employer from violating subsection (b) of this section.

(e) An employee discharged by an employer, business entity, or commercial enterprise for violation of a policy or rule prohibited under subsection (b) of this section, when he or she was lawfully transporting or storing a firearm out of plain sight in a locked motor vehicle, is entitled to full recovery as specified in subdivisions (1) through (4) of this subsection, inclusive. If the demand for the recovery is denied, the employee may bring a civil action in the courts of this State against the employer, business entity, or commercial enterprise and is entitled to the following:

(1) Reinstatement to the same position held at the time of his or her termination from employment, or to an equivalent position.

(2) Reinstatement of the employee's full fringe benefits and seniority rights, as appropriate.

(3) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the termination.

(4) Payment of reasonable attorneys' fees and legal costs incurred.

(f) A business, commercial enterprise, employer, or property owner that allows persons to transport or store any firearm or ammunition when the person is otherwise in compliance with all other applicable laws and regulations and the firearm or ammunition is locked out of sight within the trunk, glove box, or other enclosed compartment or area within or on a motor vehicle shall have complete immunity and shall not be held liable in any civil action for damages, injuries, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored in accordance with this section including, but not limited to, the theft of a firearm from an employee's automobile. Nothing contained in this section shall create a new duty on the part of any business, commercial enterprise, employer, or property owner. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises.

(g) In any action relating to the enforcement of any right or obligation under subsections (d) and (e) of this section, the reasonable, good-faith efforts of a business, commercial enterprise, employer, or property owner to comply with other applicable and irreconcilable federal or State safety laws or regulations shall be a complete defense to any liability of the business, commercial enterprise, employer, or property owner.

(h) It is the intent of this section to reinforce and protect the right of each citizen lawfully to transport and store firearms within his or her vehicle for lawful purposes in any place the vehicle is otherwise permitted to be and whenever this would not contravene existing federal or State law or regulation."

SECTION 15. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:

(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and

(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.

(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 16. G.S. 14-415.11(a) reads as rewritten:

"(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the ~~officer,~~ officer while the officer is in the performance of official duties, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer."

SECTION 17. G.S. 14-415.11 is amended by adding a new subsection to read:

"(a1) Unless otherwise prohibited by federal law, any person who has a concealed handgun permit may carry a firearm in a motor vehicle provided the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle."

SECTION 18. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 269.2, ~~14-269.3,~~ 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ or on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property."

SECTION 19. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12."

SECTION 20. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 21. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, and receipt of the required records concerning the mental health or capacity of the applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final."

SECTION 22. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 23. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 24. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit or a duplicate permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property. It shall not be considered misuse of a permit to provide a duplicate of the permit to a vender for record keeping purposes.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal."

SECTION 25. G.S. 14-415.21 reads as rewritten:

"**§ 14-415.21. Violations of this Article punishable as an ~~infraction and a Class 2 misdemeanor.~~infraction.**

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction ~~for the first offense~~ and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine ~~for the first offense,~~ the person may surrender the permit. ~~Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.~~

~~(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor.~~"

SECTION 26. G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a

valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 27. G.S. 50B-3.1(d) reads as rewritten:

"(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section."

SECTION 28. G.S. 50B-3.1(j) reads as rewritten:

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony."

SECTION 29. Article 16 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"**§ 95-156. Liability protection for businesses; firearms.**

It is the intent of the General Assembly that the decision of a business, commercial enterprise, employer, or property owner, allowing persons with handgun permits to carry a handgun on such property, does not constitute an occupational safety and health hazard within the jurisdiction of this Chapter and such a business, commercial enterprise, employer, or

property owner may not be cited under any provision of Article 16 of this Chapter, including, G.S. 95-129(1), having civil penalties imposed under G.S. 95-138 or criminal penalties imposed under G.S. 95-139. The Attorney General shall intervene and defend this Section in any cause of action brought as a private right of action or by the Occupational Safety and Health Administration of the United States Department of Labor. This section shall not be construed to permit a person to possess a firearm outside of a motor vehicle while on the premises of a place of employment where the person in legal possession or control of the premises has posted a conspicuous notice prohibiting possession of a firearm on the premises."

SECTION 30. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 31. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

HOUSE BILL 650

Short Title:	Amend Various Gun Laws.	(Public)
Sponsors:	Representatives Hilton, LaRoque, Cleveland, and Hastings (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 6, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS LAWS REGARDING THE RIGHT TO OWN, POSSESS, OR CARRY A FIREARM IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-269.2 reads as rewritten:

"**§ 14-269.2. Weapons on campus or other educational property.**

(a) The following definitions apply to this section:

(1) Educational property. – Any school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, ~~used,~~ or operated by any board of education or school board of trustees, or directors for the administration of any school.

(1a) Employee. – A person employed by a local board of education or school whether the person is an adult or a minor.

(1b) School. – A public or private school, community college, college, or university.

(2) Student. – A person enrolled in a school or a person who has been suspended or expelled within the last five years from a school, whether the person is an adult or a minor.

(3) Switchblade knife. – A knife containing a blade that opens automatically by the release of a spring or a similar contrivance.

(4) Weapon. – Any device enumerated in subsection (b), (b1), or (d) of this section.

(b) It shall be a ~~Class I felony~~ Class 1 misdemeanor for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school. Unless the conduct is covered under some other provision of law providing greater punishment, any person who willfully discharges a firearm of any kind on educational property is guilty of a Class F felony. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(b1) It shall be a Class G felony for any person to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1, on educational property or to a curricular or extracurricular activity sponsored by a school. This subsection shall not apply to fireworks.

(c) It shall be a Class I felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any gun, rifle, pistol, or

other firearm of any kind on educational property. However, this subsection does not apply to a BB gun, stun gun, air rifle, or air pistol.

(c1) It shall be a Class G felony for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any dynamite cartridge, bomb, grenade, mine, or powerful explosive as defined in G.S. 14-284.1 on educational property. This subsection shall not apply to fireworks.

(d) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(e) It shall be a ~~Class 1~~ Class 2 misdemeanor for any person to cause, encourage, or aid a minor who is less than 18 years old to possess or carry, whether openly or concealed, any BB gun, stun gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razors and razor blades (except solely for personal shaving), firework, or any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips and tools used solely for preparation of food, instruction, and maintenance, on educational property.

(f) ~~Notwithstanding subsection (b) of this section it shall be a Class 1 misdemeanor rather than a Class I felony for any person to possess or carry, whether openly or concealed,~~ Subsection (b) of this section shall not apply to any person who possesses or carries any gun, rifle, pistol, or other firearm of any kind, on educational property or to a curricular or extracurricular activity sponsored by a school ~~if:~~ in any of the following circumstances:

~~(1) The person is not a student attending school on the educational property or an employee employed by the school working on the educational property; and~~

~~(1a) The person is not a student attending a curricular or extracurricular activity sponsored by the school at which the student is enrolled or an employee attending a curricular or extracurricular activity sponsored by the school at which the employee is employed; and~~

(1b) The person has a permit issued in accordance with Article 54B of this Chapter or that is valid under G.S. 14-415.24 and the firearm is in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

(2) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(3) The firearm is not loaded, is in a motor vehicle, and is in a locked container or a locked firearm rack.

(4) Repealed by Session Laws 1999-211, s. 1, effective December 1, 1999, and applicable to offenses committed on or after that date.

(g) This section shall not apply to any of the following:

(1) A weapon used solely for educational or school-sanctioned ceremonial purposes, or used in a school-approved program conducted under the supervision of an adult whose supervision has been approved by the school authority.

(1a) A person exempted by the provisions of G.S. 14-269(b).

(2) Firefighters, emergency service personnel, and North Carolina Forest Service personnel, and any private police employed by a school, when acting in the discharge of their official duties.

(3) Home schools as defined in G.S. 115C-563(a).

(4) Weapons used for hunting purposes on the Howell Woods Nature Center property in Johnston County owned by Johnston Community College when used with the written permission of Johnston Community College or for hunting purposes on other educational property when used with the written permission of the governing body of the school that controls the educational property.

(5) A person registered under Chapter 74C of the General Statutes as an armed armored car service guard or an armed courier service guard when acting in the discharge of the guard's duties and with the permission of the college or university.

(6) A person registered under Chapter 74C of the General Statutes as an armed security guard while on the premises of a hospital or health care facility located on educational property when acting in the discharge of the guard's duties with the permission of the college or university.

(h) No person shall be guilty of a criminal violation of this section with regard to the possession or carrying of a weapon so long as both of the following apply:

(1) The person comes into possession of a weapon by taking or receiving the weapon from another person or by finding the weapon.

(2) The person delivers the weapon, directly or indirectly, as soon as practical to law enforcement authorities."

SECTION 2. G.S. 14-269.4 reads as rewritten:

"**§ 14-269.4. Weapons on State property and in courthouses.**

It shall be unlawful for any person willfully and intentionally to possess, or carry, whether openly or concealed, any deadly weapon, not used solely for instructional or officially sanctioned ceremonial purposes in the State Capitol Building, the Executive Mansion, the Western Residence of the Governor, or on the grounds of any of these buildings, and in any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes.

This section shall not apply ~~to:~~to any of the following:

(1) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(1a) A person exempted by the provisions of ~~G.S. 14-269(b),~~G.S. 14-269(b).

(2) through (4) Repealed by S.L. 1997-238, s. 3, effective June 27, 1997,

(4a) Any person in a building housing a court of the General Court of Justice in possession of a weapon for evidentiary purposes, to deliver it to a law-enforcement agency, or for purposes of ~~registration,~~registration.

(4b) Any district court judge or superior court judge who carries or possesses a concealed handgun in a building housing a court of the General Court of Justice if the judge is in the building to discharge his or her official duties and the judge has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24,~~G.S. 14-415.24.

(4c) Firearms in a courthouse, carried by detention officers employed by and authorized by the sheriff to carry ~~firearms,~~firearms.

(4d) Any magistrate who carries or possesses a concealed handgun in any portion of a building housing a court of the General Court of Justice other than a courtroom itself unless the magistrate is presiding in that courtroom, if the magistrate (i) is in the building to discharge the magistrate's official duties, (ii) has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24, (iii) has successfully

completed a one-time weapons retention training substantially similar to that provided to certified law enforcement officers in North Carolina, and (iv) secures the weapon in a locked compartment when the weapon is not on the magistrate's ~~person,~~person.

~~(5) State-owned rest areas, rest stops along the highways, and State-owned hunting and fishing reservations.~~

(6) A person with a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24 who has a firearm in a closed compartment or container within the person's locked vehicle or in a locked container securely affixed to the person's vehicle.

Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor."

SECTION 3. G.S. 14-269.7(a) reads as rewritten:

"(a) . Any minor who willfully and intentionally possesses or carries a handgun is guilty of a Class 2 misdemeanor."

SECTION 4. G.S. 14-269.8 reads as rewritten:

"**§ 14-269.8. Purchase or possession of firearms by person subject to domestic violence order prohibited.**

(a) ~~In accordance with G.S. 50B-3.1, it~~ It is unlawful for any ~~person~~ person, if the person has been ordered not to do so pursuant to G.S. 50B-3.1, to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms ~~if ordered by the court~~ for so long as that protective order or any successive protective order with a firearm prohibition entered against that person pursuant to Chapter 50B of the General Statutes is in effect.

(b) Any person violating the provisions of this section shall be guilty of a ~~Class H felony.~~Class 1 misdemeanor."

SECTION 5. G.S. 14-277.1 reads as rewritten:

"**§ 14-277.1. Communicating threats.**

(a) A person is guilty of a Class 1 misdemeanor if without lawful ~~authority:~~authority or justification:

(1) He willfully threatens to physically injure the person or that person's child, sibling, spouse, or dependent or willfully threatens to damage the property of another;

(2) The threat is communicated to the other person, orally, in writing, or by any other means;

(3) The threat is made in a manner and under circumstances which would cause a reasonable person to believe that the threat is likely to be carried out; and

(4) The person threatened believes that the threat will be carried out.

(b) A violation of this section is a Class 1 misdemeanor."

SECTION 6. G.S. 14-277.2 reads as rewritten:

"**§ 14-277.2. Weapons at parades, etc., prohibited.**

(a) It shall be unlawful for any person participating ~~in, affiliated with,~~ in or present as a spectator at any parade, funeral procession, picket line, or demonstration upon any private health care facility or upon any public place owned or under the control of the State or any of its political subdivisions to willfully or intentionally possess or have immediate access to any dangerous weapon. Violation of this subsection shall be a Class 1 misdemeanor. ~~It shall be presumed that any~~ Any rifle or gun carried on a rack in a pickup truck ~~at a holiday parade or in a funeral procession~~ or otherwise locked within a vehicle or stored in a locked container securely affixed to a vehicle does not violate the terms of this ~~act.~~section.

(b) For the purposes of this section the term "dangerous weapon" shall include those weapons specified in G.S. 14-269, 14-269.2, 14-284.1, or ~~14-288.8 or any other object capable of inflicting serious bodily injury or death when used as a weapon.~~14-288.8.

(c) The ~~provisions~~ prohibitions of this section shall not apply ~~to~~ to any of the following:

(1) ~~a~~ A person exempted by the provisions of G.S. ~~14-269(b)~~ 14-269(b).

(2) ~~or to persons~~ A person authorized by State or federal law to carry dangerous weapons in the performance of ~~their duties~~ the person's duties.

(3) ~~or to any~~ Any person who obtains a permit to carry a dangerous weapon at a parade, funeral procession, picket line, or demonstration from the sheriff or police chief, whichever is appropriate, of the locality where such parade, funeral procession, picket line, or demonstration is to take place.

(4) A person who is carrying a concealed handgun and has a permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24."

SECTION 7. G.S. 14-288.12(b) reads as rewritten:

"(b) The ordinances authorized by this section may permit prohibitions and restrictions:

(1) Of movements of people in public places, including directing and compelling the evacuation of all or part of the population from any stricken or threatened area within the governing body's jurisdiction, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, and the movement of persons within the area;

(2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;

(3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;

(4) ~~Upon~~ Subject to G.S. 14-288.1A, upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and

(5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

SECTION 8. G.S. 14-409.40 reads as rewritten:

"**§ 14-409.40. Statewide uniformity of local regulation.**

(a) It is declared by the General Assembly that the regulation of firearms is properly an issue of general, statewide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments except as provided by this section.

(a1) The General Assembly further declares that the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se and furthermore, that it is the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, distribution, sale, or transfer that is the proximate cause of injuries arising from their unlawful use. This subsection applies only to causes of action brought under subsection (g) of this section.

(b) Unless otherwise permitted by this section or other State statute, no county or municipality, or instrumentality or agent thereof, by ordinance, resolution, exercise of proprietary authority, or other enactment, shall regulate in any manner the possession, ownership, storage, transfer, sale, purchase, licensing, or registration of firearms, firearms

ammunition, components of firearms, dealers in firearms, or dealers in handgun components or parts.

(c) Notwithstanding subsection (b) of this section, a county or municipality, by zoning or other ordinance, may regulate or prohibit the sale of firearms at a location only if there is a lawful, general, similar regulation or prohibition of commercial activities at that location. ~~Nothing in this subsection shall restrict the right of a county or municipality to adopt a general zoning plan that prohibits any commercial activity within a fixed distance of a school or other educational institution except with a special use permit issued for a commercial activity found not to pose a danger to the health, safety, or general welfare of persons attending the school or educational institution within the fixed distance.~~However, an ordinance that is designed or enforced effectively to restrict or prohibit the sale, purchase, transfer, manufacture, or display of firearms, ammunition, or firearm accessories that are otherwise lawful under the laws of this State is in conflict with this section and is void.

(d) No county or municipality, or instrumentality or agent thereof, by zoning or other ordinance, shall regulate in any manner firearms shows with regulations more stringent than those applying to shows of other types of items.

(e) A county or municipality may regulate the transport, carrying, or possession of firearms by employees of the local unit of government in the course of their employment with that local unit of government.

(f) Nothing contained in this section prohibits municipalities or counties from application of their authority under G.S. 153A-129, 160A-189, 14-269, 14-269.2, 14-269.3, 14-269.4, 14-277.2, 14-415.11, 14-415.23, ~~including~~ or from prohibiting the possession of firearms in public-owned ~~buildings, on the grounds or parking areas of those buildings, or in public parks or recreation areas,~~ buildings, except nothing in this subsection shall prohibit a person from storing a firearm within a motor vehicle while the vehicle is ~~on these grounds or areas. Nothing contained in this section prohibits municipalities or counties from exercising powers provided by law in declared states of emergency under Article 36A of this Chapter.~~ in parking facilities within or attached to such buildings. A prohibition on firearms in publicly owned buildings shall not apply to business or residential lessees occupying the premises.

(g) The authority to bring suit and the right to recover against any firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association by or on behalf of any governmental unit, created by or pursuant to an act of the General Assembly or the Constitution, or any department, agency, or authority thereof, for damages, abatement, injunctive relief, or any other remedy resulting from or relating to the lawful design, marketing, manufacture, distribution, sale, or transfer of firearms or ammunition to the public is reserved exclusively to the State. Any action brought by the State pursuant to this section shall be brought by the Attorney General on behalf of the State. This section shall not prohibit a political subdivision or local governmental unit from bringing an action against a firearms or ammunition marketer, manufacturer, distributor, dealer, seller, or trade association for breach of contract or warranty for defect of materials or workmanship as to firearms or ammunition purchased by the political subdivision or local governmental unit."

SECTION 9. G.S. 14-415.1 reads as rewritten:

"**§ 14-415.1. Possession of firearms, etc., by felon prohibited.**

(a) It shall be unlawful for any person who has been convicted of a felony to purchase, own, possess, or have in his custody, care, or control any firearm or any weapon of mass death and destruction as defined in G.S. 14-288.8(c). For the purposes of this section, a firearm is (i) any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, or its frame or receiver, or (ii) any firearm muffler or firearm silencer. This section does not apply to an antique firearm, as defined in G.S. 14-409.11.

Every person violating the provisions of this section shall be punished as a Class G felon.

(b) Prior convictions which cause disentitlement under this section shall only include:
(1) Felony convictions in North Carolina that occur before, on, or after December 1, 1995; and
(2) Repealed by Session Laws 1995, c. 487, s. 3, effective December 1, 1995.
(3) Violations of criminal laws of other states or of the United States that occur before, on, or after December 1, 1995, and that are substantially similar to the crimes covered in subdivision (1) which are punishable where committed by imprisonment for a term exceeding one year.

When a person is charged under this section, records of prior convictions of any offense, whether in the courts of this State, or in the courts of any other state or of the United States, shall be admissible in evidence for the purpose of proving a violation of this section. The term "conviction" is defined as a final judgment in any case in which felony punishment, or imprisonment for a term exceeding one year, as the case may be, is ~~permissible,~~ authorized, without regard to the plea entered or to the sentence imposed. A judgment of a conviction of the defendant or a plea of guilty by the defendant to such an offense certified to a superior court of this State from the custodian of records of any state or federal court shall be prima facie evidence of the facts so certified.

(c) The indictment charging the defendant under the terms of this section shall be separate from any indictment charging him with other offenses related to or giving rise to a charge under this section. An indictment which charges the person with violation of this section must set forth the date that the prior offense was committed, the type of offense and the penalty therefor, and the date that the defendant was convicted or plead guilty to such offense, the identity of the court in which the conviction or plea of guilty took place and the verdict and judgment rendered therein.

(d) This section does not apply to a person ~~whose firearms rights have been restored under G.S. 14-415.4, unless the person is convicted of a subsequent felony after the petition to restore the person's firearms rights is granted.~~ who, pursuant to the law of the jurisdiction in which the conviction occurred, has been pardoned or has had his or her firearms rights restored.

(e) This section does not apply and there is no disentitlement under this section if the felony conviction is a violation under the laws of North Carolina, another state, or the United States that pertains to antitrust violations, unfair trade practices, or restraints of trade."

SECTION 10. G.S. 14-415.11(c) reads as rewritten.

"(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by ~~G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1,~~ G.S. 14-269.2 and G.S. 14-269.4, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, ~~a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways,~~ or on any private premises where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate ~~amounts.~~amounts or if the person is on the person's own property."

SECTION 11. G.S. 14-415.12 reads as rewritten:

"**§ 14-415.12. Criteria to qualify for the issuance of a permit.**

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

(1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.

(2) The applicant is 21 years of age or older.

~~(3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.~~

(4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

a. The North Carolina Criminal Justice Education and Training Standards Commission,

b. The National Rifle Association, or

c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

(5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

(1) Is ineligible to ~~own, possess,~~ possess or receive a firearm under the provisions of State or federal law.

~~(2) Is under indictment or against whom a finding of probable cause exists for a felony.~~

~~(3) Has been adjudicated guilty in any court of a felony, unless: (i) the felony is an offense that pertains to antitrust violations, unfair trade practices, or restraints of trade, or (ii) the person's firearms rights have been restored pursuant to G.S. 14-415.4.~~

~~(4) Is a fugitive from justice.~~

~~(5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.~~

~~(6) Is currently, or has been previously adjudicated by a court or administratively determined by a governmental agency whose decisions are subject to judicial review to be, lacking mental capacity or mentally ill. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under this subdivision.~~

~~(7) Is or has been discharged from the armed forces under conditions other than honorable.~~

~~(8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1,~~

~~14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3A, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, 14-415.21(b), 14-415.26(d), or former G.S. 14-277.3.~~

~~(9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.~~

(10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.

(11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

(c) An applicant shall not be ineligible to receive a concealed carry permit under ~~subdivision (6) of subsection (b) of~~ this section because of involuntary commitment to mental health services if the individual's rights have been restored under G.S. 122C-54.1. Receipt of previous consultative services or outpatient treatment alone shall not disqualify an applicant under any provision of this section."

SECTION 12. G.S. 14-415.13(a)(5) reads as rewritten:

"(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

...

(5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the ~~applicant.~~applicant to be used for the sole purpose of determining whether the applicant is disqualified for a permit under the provisions of G.S. 14-415.12."

SECTION 13. G.S. 14-415.14(b) reads as rewritten:

"(b) The permit application shall also contain a warning substantially as follows:

"CAUTION: Federal law and State law on the possession of handguns and firearms may differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution."

SECTION 14. G.S. 14-415.15 reads as rewritten:

"**§ 14-415.15. Issuance or denial of permit.**

(a) Except as permitted under subsection (b) of this section, within ~~90~~ 45 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13 (a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed ~~90~~ 45 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The applicant may submit proof of a protective order issued under G.S. 50B-3 for the protection of the applicant as evidence of an emergency situation. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within ~~90~~ 45 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The

determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and the ~~reasonableness of the sheriff's refusal.~~ sheriff's refusal shall be sustained only if the sheriff has demonstrated that the applicant is prohibited from receiving or possessing a firearm by a provision of federal or State law, is currently the subject of criminal or other proceedings that could lead to such a prohibition, or otherwise fails to meet the criteria of this section. The determination by the court ~~shall be final.~~ is an appealable final order."

SECTION 15. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

(a) At least 45 days prior to the expiration date of a permit, the sheriff of the county where the permit was issued shall send a written notice to the permittee explaining that the permit is about to expire and including information about the requirements for renewal of the permit. The notice shall be sent by first class mail to the last known address of the permittee. Failure to receive a renewal notice shall not relieve a permittee of requirements imposed in this section for renewal of the permit.

(b) The holder of a permit shall apply to renew the permit within the 90-day period prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, ~~a notarized~~ an affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee.

(c) Upon receipt of the completed renewal ~~application, including the permittee's fingerprints,~~ application and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, including with another inquiry of the National Instant Criminal Background Check System (NICS), and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within the 90-day period prior to its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit. The permit of a permittee who complies with this section shall remain valid beyond the expiration date of the permit until the permittee either receives a renewal permit or is denied a renewal permit by the sheriff.

(d) No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation.

(e) If the permittee does not apply to renew the permit prior to its expiration date, but does apply to renew the permit within 60 days after the permit expires, the sheriff may waive the requirement of taking another firearms safety and training course. This subsection does not extend the expiration date of the permit."

SECTION 16. G.S. 14-415.17 reads as rewritten:

"**§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.**

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and ~~social security number of the permittee, and~~ the drivers license identification number used in applying for the permit. The sheriff shall maintain a ~~listing~~ listing, including the identifying information, of those persons who are issued a ~~permit and any pertinent information regarding the issued permit.~~ permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 17. G.S. 14-415.18(a) reads as rewritten:

"(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

(1) Fraud or intentional ~~or~~ and material misrepresentation in the obtaining of a permit.

(2) Misuse of a permit, including lending or giving a permit to another person, ~~duplicating~~ materially altering a permit, or using a permit with the intent to unlawfully cause harm to a person or property.

(3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.

(4) The violation of any of the terms of this Article.

(5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the ~~facts,~~ facts and the law, and ~~the reasonableness of the sheriff's refusal.~~ the sheriff's refusal shall be sustained only if the sheriff demonstrates that the permittee is or has become disqualified for a permit under the terms of this section."

SECTION 18. G.S. 14-415.21 is repealed.

SECTION 19. G.S. 14-415.24 reads as rewritten:

"**§ 14-415.24. Reciprocity; out-of-state handgun permits.**

(a) A valid concealed handgun permit or license issued by another state is valid in ~~North Carolina if that state grants the same right to residents of North Carolina who have valid concealed handgun permits issued pursuant to this Article in their possession while carrying concealed weapons in that state.~~ North Carolina.

~~(b) The Attorney General shall maintain a registry of states that meet the requirements of this section on the North Carolina Criminal Information Network and make the registry available to law enforcement officers for investigative purposes.~~

(c) Every 12 months after the effective date of this subsection, the Department of Justice shall make written inquiry of the concealed handgun permitting authorities in each other state as to: (i) whether a North Carolina resident may carry a concealed handgun in their state based upon having a valid North Carolina concealed handgun permit and (ii) whether a North Carolina resident may apply for a concealed handgun permit in that state based upon having a valid North Carolina concealed handgun permit. The Department of Justice shall attempt to secure from each state permission for North Carolina residents who hold a valid North Carolina concealed handgun permit to carry a concealed handgun in that state, either on the basis of the North Carolina permit or on the basis that the North Carolina permit is sufficient to permit the issuance of a similar license or permit by the other state."

SECTION 20. G.S. 50B-3.1 reads as rewritten:

"**§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.**

(a) Required Surrender of Firearms. – Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.

(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. – The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. – The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. – Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from ~~owning,~~ possessing, purchasing, or receiving or attempting to ~~own,~~ possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used ~~by the sheriff to pay the costs of administering this section and for other law enforcement purposes.~~ to offset the cost of storage and in no instance may they exceed the actual storage costs. The county shall expend the restricted funds for ~~these purposes~~ this purpose only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. ~~The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.~~

(e) Retrieval. – If the court does not enter a protective order when the ex parte or emergency order ~~expires,~~ expires and does not otherwise find the defendant is precluded from possessing or receiving a firearm pursuant to State or federal law, the court shall enter an order directing the return of any firearms surrendered or seized pursuant to this section to the defendant, and the defendant may retrieve any weapons surrendered to the ~~sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to~~

~~State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.~~sheriff.

(f) Motion for Return. – The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges for offenses alleged to have been committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any such pending criminal ~~charges committed against the person that is the subject of the current protective order.~~ charges. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.
(2) Whether the defendant is subject to any other protective orders.
(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.
(4) Whether the defendant has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order.

The court shall ~~deny the return of firearms, ammunition, or permits if~~ grant the motion unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or ~~if the defendant~~ has any pending criminal charges, in either State or federal court, for offenses alleged to have been committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. – A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items ~~by~~ by, or their surrender to, the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. – If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the ~~defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.~~defendant.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms ~~to:~~to do any of the following:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the ~~court;~~ court.

~~(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or~~

(3) Provide false information to the court pertaining to any of these items.

(j) Violations. – In accordance with G.S. 14-269.8, it is unlawful for any person to ~~own,~~ possess, purchase, or receive or attempt to ~~own,~~ possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by the court for so long as that protective order or any successive protective order with a fiream prohibition entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a ~~Class H felony.~~ Class 1 misdemeanor.

(k) Official Use Exemption. – This section shall not prohibit law enforcement officers and members of any branch of the United States armed forces, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter."

SECTION 21. G.S. 120-32.1 is amended by adding a new subsection to read:

"(c1) No rule adopted under this section shall prohibit the transportation or storage of a firearm in a closed compartment or container within a person's locked vehicle or in a locked container securely affixed to a person's vehicle."

SECTION 22. G.S. 153A-129 reads as rewritten:

"**§ 153A-129. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ county may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place except when used to take birds or animals pursuant to Chapter 113, Subchapter IV, when used in defense of person or property, or when used pursuant to lawful directions of law-enforcement officers. ~~A county may also regulate the display of firearms on the public roads, sidewalks, alleys, or other public property. This section does not limit a county's authority to take action under Chapter 14, Article 36A.~~"

SECTION 23. G.S. 166A-3 reads as rewritten:

"**§ 166A-3. Limitations.**

Nothing in this Article shall be construed ~~to:~~ to do any of the following:

(1) Interfere with dissemination of news or comment on public affairs; but any communications facility or organization, including but not limited to radio and television stations, wire services, and newspapers, may be requested to transmit or print public service messages furnishing information or instructions in connection with an emergency, disaster or ~~war; or~~ war.

(2) Limit, ~~modify or abridge~~ modify, or abridge, except as provided in subdivision (3) of this section, the authority of the Governor to proclaim martial law or exercise any other powers vested in him under the Constitution, statutes, or common law of this State independent of, or in conjunction with, any provisions of this Article.

(3) Authorize the taking, confiscation, or seizure of otherwise lawfully possessed firearms, ammunition, or components thereof or to authorize the imposition of any additional restriction or prohibition on the possession, carrying, transportation, sale, purchase, storage, or use of lawfully possessed firearms, ammunition, or ammunition components during a proclaimed state of disaster or martial law."

SECTION 24. G.S. 160A-189 reads as rewritten:

"**§ 160A-189. Firearms.**

Subject to Article 53C of Chapter 14 of the General Statutes, a ~~A~~ city may by ordinance regulate, restrict, or prohibit the discharge of firearms at any time or place within the city except when used in defense of person or property or pursuant to lawful directions of law-enforcement ~~officers, and may regulate the display of firearms on the streets, sidewalks, alleys, or other public property. Nothing in this section shall be construed to limit a city's authority to take action under Article 36A of Chapter 14 of the General Statutes.~~officers."

SECTION 25. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

HOUSE BILL 682:
Require Dom. Vio. Training/Certain Persons

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 31, 2011
Introduced by:	Reps. McLawhorn, Farmer-Butterfield, Ross, Lucas	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: House Bill 682 would require domestic violence training for certain individuals.

BACKGROUND AND CURRENT LAW: North Carolina's Domestic Violence Act, G.S. Chapter 50B, does not currently contain a provision mandating that certain individuals receive domestic violence (DV) training.

Law enforcement officers are required under G.S. 17C-6(a)(2) to have education and training in response to, and investigation of, domestic violence cases.

District Court Judges. Following the issuance of the Report of the Joint Legislative Committee on Domestic Violence, the 2010 Session of the 2009 General Assembly requested, through Session Law 2010-106 (House Bill 1762) that the North Carolina Supreme Court adopt rules establishing minimum standards of education and training for district court judges in handling civil and criminal DV cases; the UNC School of Government (SOG) was "encouraged" to provide this education and training. In July 2010, the North Carolina Administrative Office of the Courts (AOC) published the "North Carolina Domestic Violence Best Practices Guide for District Court Judges."

Parenting coordinators currently are required under G.S. 50-90 *et seq.* to participate in 24 hours of training in topics related to, among other things, "the dynamics of high conflict families."

BILL ANALYSIS: House Bill 682 would enact a new G.S. 50B-10 requiring domestic violence training for prosecutors, magistrates, mediators, custody evaluators, parenting coordinators, Guardians *ad litem,* and educators in the public school system. Initial and continuing education would be coordinated by the SOG, the Conference of District Attorneys, the AOC, the Mediation Network of North Carolina, and the Department of Public Instruction, as appropriate, in collaboration with the North Carolina Coalition Against Domestic Violence.

EFFECTIVE DATE: This act would become effective October 1, 2011.

H682-SMTJ-44(e1) v2

HOUSE BILL 682

Short Title:	Require Dom. Vio. Training/Certain Persons.	(Public)
Sponsors:	Representatives McLawhorn, Farmer-Butterfield, Ross, and Lucas (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DOMESTIC VIOLENCE TRAINING FOR CERTAIN INDIVIDUALS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 50B of the General Statutes is amended by adding a new section to read:

"**§ 50B-10. Domestic violence training.**

Domestic violence training is required for the following individuals:

(1) Prosecutors.
(2) Magistrates.
(3) Mediators.
(4) Custody evaluators.
(5) Parenting coordinators.
(6) Guardians ad litem.
(7) Educators in the public school system.

Both initial and continuing training efforts for the individuals listed under subdivisions (1) through (7) of this section shall be coordinated by the North Carolina School of Government, the Conference of District Attorneys, the Administrative Office of the Courts, the Mediation Network of North Carolina, and the Department of Public Instruction, as appropriate, and shall be in collaboration with the North Carolina Coalition Against Domestic Violence."

SECTION 2. This act becomes effective October 1, 2011.

HOUSE PCS 706:
Alimony/Postseparation Support Changes

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 1, 2011
Introduced by:	Rep. Rhyne	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to First Edition H706-CSSU-15		

SUMMARY: The Proposed Committee Substitute for House Bill 706 makes the following changes to the law with regard to alimony and postseparation support:

- ***Makes a conforming change to G.S. 50-11 (effects of absolute divorce) to account for a previous amendment to G.S. 50-16.1A(4) that provides that postseparation support is terminated upon entry of absolute divorce, if no claim for alimony is pending at that time.***
- ***Creates a rebuttable presumption that retirement of the supporting spouse after the age of 67 is not in bad faith and would be a change of circumstances to consider for modification of alimony or postseparation support orders.***

BILL ANALYSIS:

Section 1 of the PCS amends G.S. 50-11(c), which provides that a judgment of divorce shall not affect the rights of either spouse with regard to an action for alimony or postseparation support. In 2005, G.S. 50-16.1A(4) (definition of 'postseparation support') was amended to provide that support terminates upon entry of a judgment for absolute divorce if no claim for alimony is pending at that time. This section amends G.S. 50-11(c) to reflect the earlier amendment.

Section 2 of the PCS amends G.S. 50-16.9 (modification of alimony or postseparation support orders) by adding a new subsection (a1). Subsection (a) provides that an order for alimony or postseparation support may be modified upon a motion and showing of changed circumstances. New subsection (a1) adds a rebuttable presumption that the voluntary retirement of a supporting spouse after the age of 67 would not be considered an action in bad faith. Unless that presumption is rebutted, the retirement would be a change of circumstances to be considered in determining whether to modify an order.

EFFECTIVE DATE: The act is effective October 1, 2011.

H706-SMSU-34(CSSU-15) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 706
PROPOSED COMMITTEE SUBSTITUTE H706-PCS30352-SU-15

Short Title: Alimony/Postseparation Support Changes. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or postseparation support pending at the time the judgment for divorce is ~~granted.~~granted, except as provided by G.S. 50-16.1A(4). Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony or postseparation support or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the judgment of absolute ~~divorce.~~divorce, except as provided by G.S. 50-16.1A(4)."

SECTION 2. G.S. 50-16.9 is amended by adding a new subsection to read:

"(a1) There is a rebuttable presumption that the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years is not an action in bad faith. Unless the presumption is rebutted, the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years constitutes a change of circumstances, and the court shall consider this change of circumstances when determining whether to modify an alimony or postseparation support order. This subsection applies to any order of alimony, alimony pendent lite, or postseparation support, including any order entered pursuant to a repealed statute."

SECTION 3. This act becomes effective October 1, 2011.

HOUSE BILL 706

Short Title:	Alimony/Postseparation Support Changes.	(Public)
Sponsors:	Representative Rhyne (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAW RELATING TO ALIMONY AND POSTSEPARATION SUPPORT, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or postseparation support pending at the time the judgment for divorce is ~~granted.~~granted, except as provided by G.S. 50-16.1A(4). Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony or postseparation support or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of the judgment of absolute ~~divorce.~~divorce, except as provided by G.S. 50-16.1A(4)."

SECTION 2. G.S. 50-16.9 is amended by adding a new subsection to read:

"(a1) There is a rebuttable presumption that the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years is not an action in bad faith. Unless the presumption is rebutted, the voluntary retirement of the supporting spouse after the supporting spouse attains the age of 67 years constitutes a change of circumstances, and the court shall consider this change of circumstances when determining whether to modify an alimony or postseparation support order. This subsection applies to any order of alimony, alimony pendent lite, or postseparation support, including any order entered pursuant to a repealed statute."

SECTION 3. G.S. 52-10 is amended by adding a new subsection to read:

"(a1) Any contract between husband and wife, with or without valuable consideration, to waive and release all rights and obligations to postseparation support or alimony is valid and not inconsistent with public policy, if the contract is in writing and is acknowledged by both parties before a certifying officer, and such release may be pleaded in bar of any action or proceeding for the recovery of the rights so released."

SECTION 4. This act is effective October 1, 2011. Section 3 of this act applies to contracts entered into on or after that date.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cynthia Williams	NCDOC - DCC
Marcia Trunk	NCACC
Landon Nobles	SLF
Lucy Little	NCDOC - DC
Nancy Thompson	Weyerhaeuser
Robin Johnson	
Lesley Cates	UNC
Tara Minter	N.C. Council for Women
Brandi Bullock	State Board of Education
Cam Mellon	SBE
Mike Davis	The Timken Company



VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Suddath	PBV
Alex Miller	KLG / NCCADV
Susan Taylor	NCCADV
W. Gardner Culpepper	DLC & Assoc.
Amanda Martin-Kramer	Intern, Legal Counsel of Gov. Office
ANTHONY IANNETTA	NRA
MIKE MANN	NCRPA
Robert Youngblood	Randolph County Tea Party Co-Chair / Grass Roots NC
Jeff Rau	Grass Roots NC
John Runkle	NC LCV
Rob Schofield	NCPW

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 1, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrew Cagle	NC Sheriffs' Assn.
Katherine Joyce	NCASA
Roxane Kolar	NCGV
John Sloan	Self
Eddie Caldwell	NC Sheriffs' Assn.
Dennis Allen	North Carolina Rifle & Pistol Assoc.
Henri McClees	McClees Consulting





House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary C

DATE: 6/1/11 **Room:** 415

***Name:** Kalen Perry
County: Carteret
Sponsor: McElraft

***Name:** Zoë Clarke
County: Buncombe
Sponsor: Keever

***Name:**
County:
Sponsor:

***Name:**
County:
Sponsor:

***Name:**
County:
Sponsor:

***Name:**
County:
Sponsor:

House Sgt-At Arms:

1. **Name:** Bill MacRae
2. **Name:** Billy Jones
3. **Name:**
4. **Name:**
5. **Name:**
6. **Name:**

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Tuesday, June 14, 2011

The House Judiciary Subcommittee C (Family Law) met on Tuesday, June 14, 2011, at 10:05 a.m. in Room 1425 of the Legislative Building. The following members were present: Representative Tim Moore, Chair; Representatives Cleveland, Dixon, Hackney, Jones, Mobley, and Weiss.

Rep. Moore presided and called the meeting to order.

The following bills were considered:

SB 311, Pretrial Release Violation/Arrest (Senator East, Primary Sponsor). Chair Moore accepted a motion from Rep. Mobley to place the Proposed Committee Substitute before the committee. Senator East and Rep. Holloway were recognized to speak on the bill. Discussion followed. Rep. Jones was recognized for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority in favor, the motion carried.

SB 756, Amend Bail Law/Pretrial Release Programs (Senators Clary, East, and Jones, Primary Sponsors). Chair Moore said the bill would be taken up later in the day.

SB 487, Disputed Earnest Money/Attorneys Deposit (Senators Stein, Vaughan, and Newton, Primary Sponsors). Chair Moore recognized Katherine Wilkerson (NC Bar Association) to speak. Discussion followed. The bill was displaced until later.

SB 203, Seat Aside Child Supp./Limited Circumstances (Senators McKissick and East, Primary Sponsors). Chair Moore recognized Senator East and Senator McKissick to speak on the bill. Discussion and debate. The bill was displaced until differences could be worked out.

SB 487, Disputed Earnest Money/Attorneys Deposit (Senators Stein, Vaughan, and Newton, Primary Sponsors). Rep. Weiss offered an amendment. Public who spoke: Kim Crouch (NC Bar Association). The amendment was adopted. Rep. Jones was recognized for a motion of a favorable report as amended, rolled into a new Proposed Committee Substitute and unfavorable to the original bill. With the majority being in favor, the motion carried.

The meeting adjourned at 10:29 a.m. to reconvene at 4:30 p.m. on June 14, 2011.

Respectfully submitted,

Representative Tim Moore
Chair

Nancy Garriss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Tuesday, June 14, 2011
Room 1425 LOB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
SB 203	Set Aside Child Supp./Limited Circumstances.	Senator McKissick Senator East
SB 311	Pretrial Release Violation/Arrest.	Senator East
SB 487	Disputed Earnest Money/Attorneys Deposit.	Senator Stein Senator Vaughan Senator Newton
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Tuesday, June 14, 2011
TIME: 10:00 am
LOCATION: 1425 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 203	Set Aside Child Supp./Limited Circumstances.	Senator McKissick Senator East
SB 311	Pretrial Release Violation/Arrest	Senator East
SB 487	Disputed Earnest Money/Attorneys Deposit.	Senator Stein Senator Vaughan Senator Newton

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **8 PM** o'clock on **June 13, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☒ Committee Substitute for

SB 311 A BILL TO BE ENTITLED AN ACT TO ALLOW WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

which changes the title

☒ With a favorable report as to the House committee substitute bill, unfavorable as to the Senate Committee Substitute Bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No.____) is placed on the Calendar of _____. (The original bill resolution No.____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
SB 487 A BILL TO BE ENTITLED AN ACT AUTHORIZING ATTORNEYS LICENSED IN THIS STATE TO DEPOSIT DISPUTED EARNEST MONEY WITH THE CLERK OF SUPERIOR COURT.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the House committee substitute bill, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

SENATE BILL 203:
Set Aside Child Supp./Limited Circumstances

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 14, 2011
Introduced by:	Sens. McKissick, East	**Prepared by:**	Wendy Graf Ray
Analysis of:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 203 provides that an order of paternity or an affidavit of parentage may be set aside at any time by a trial court if the paternity order or the affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect and genetic tests establish that the putative father is not the biological father of the child.***

CURRENT LAW: Under G.S. 49-14, the paternity of a child born out of wedlock may be established by civil action at any time prior to the child's 18th birthday. Proof of paternity is by clear, cogent, and convincing evidence; in other words, the evidence presented must be highly and substantially more probable to be true than not. If the action to establish paternity is brought more than 3 years after the child is born or is brought after the death of the putative father, paternity cannot be established in a contested case without evidence from a blood or genetic marker test.

Under G.S. 110-132, instead of a legal proceeding to establish paternity, the putative father and the mother of a dependent child may execute written affidavits of parentage. The affidavits constitute an admission of paternity, and have the same legal effect as a judgment for the purpose of establishing a child support obligation. Either party may rescind the affidavit within 60 days of the date the document is executed. After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake or excusable neglect. The burden of proof is on the challenging party, and any child support obligations would continue until the matter is decided, except for good cause shown.

Under G.S. 1A-1 of the NC Rules of Civil Procedure, Rule 60(b) the court may relieve a party from a final judgment, order, or proceeding for reasons including the following, provided the motion for relief is made within one year after the judgment or order was entered.

- Mistake, inadvertence, surprise, or excusable neglect;
- Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- Fraud, misrepresentation, or other misconduct of an adverse party;

BILL ANALYSIS: Senate Bill 203 provides that an order of paternity or an affidavit of parentage may be set aside at any time by a trial court if the paternity order or the affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect and genetic tests establish that the putative father is not the biological father of the child. The burden of proof in any motion to set aside an affidavit of parentage after 60 days or to set aside an order of paternity would be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court would order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing in accordance with State law. If the court determines, as a result of genetic testing, that the putative father is not the biological father of the child and the order of paternity or the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect the court may set aside the order of paternity or the affidavit of parentage and terminate all future child support obligations of the putative father with regard to the child. The court may consider the best interests of

the child in making the determination. Any past-due child support would not be affected, and would remain due and owing. The bill does not affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

EFFECTIVE DATE: The bill would become effective October 1, 2011 and apply to motions made on or after that date.

Brenda Carter, counsel to Senate Judiciary II, substantially contributed to this summary.

S203-SMSU-42(e2) v1

SENATE BILL 203
Second Edition Engrossed 6/7/11

Short Title:	Set Aside Child Supp./Limited Circumstances.	(Public)
Sponsors:	Senators McKissick, East; Allran, Atwater, Bingham, Clary, Dannelly, Graham, Hartsell, Hise, Jones, and Vaughan.	
Referred to:	Rules and Operations of the Senate.	

March 7, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS TO SET ASIDE AN ORDER OF PATERNITY OR AN AFFIDAVIT OF PARENTAGE UNDER LIMITED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 49-14 reads as rewritten:

"**§ 49-14. Civil action to establish ~~paternity.~~paternity; motion to set aside paternity.**

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding.

(b) Proof of paternity pursuant to this section shall be by clear, cogent, and convincing evidence.

(c) No such action shall be commenced nor judgment entered after the death of the putative father, unless the action is commenced either:

(1) Prior to the death of the putative father;

(2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or

(3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father.

(d) If the action to establish paternity is brought more than three years after birth of a child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.

(f) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If

paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(g) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child.

(h) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an order of paternity may be set aside by a trial court if each of the following applies:

(1) The paternity order was entered as the result of fraud, duress, mutual mistake, or excusable neglect.

(2) Genetic tests establish the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an order of paternity shall be on the moving party. Child support responsibilities of the parties may not be suspended while the motion is pending, except for good cause shown. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity and terminate all future child support obligations of the putative father with regard to the minor child whose parentage is at issue. In determining whether the order of paternity should be set aside, the court may consider the best interests of the child. If the court sets aside an order of paternity pursuant to this section, no party may be required to reimburse past child support paid on behalf of the child to the custodial parent, the State, or any other assignee of child support. Any past-due child support payment vested pursuant to G.S. 50-13.10 shall not be affected by any order entered pursuant to this section. All vested child support arrears shall remain due and owing. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage."

SECTION 2. G.S. 110-132 reads as rewritten:

"**§ 110-132. Affidavit of parentage and agreement to ~~support.~~motion to set aside affidavit of parentage.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the rescission and to include in the order specific findings of fact that the request for rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to

present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

~~After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.~~

(a1) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set aside by a trial court after 60 days have elapsed only if each of the following applies:

(1) The affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect.

(2) Genetic tests establish that the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed for rescission shall be on the moving party. Child support responsibilities of the parties may not be suspended while the motion is pending, except for good cause shown. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage and terminate all future child support obligations of the putative father with regard to the minor child whose parentage is at issue. In determining whether the affidavit of parentage should be set aside, the court may consider the best interests of the child. If the court sets aside an affidavit of parentage pursuant to this section, no party may be required to reimburse past child support paid on behalf of the child to the custodial parent, the State, or any other assignee of child support. Any past-due child support payment vested pursuant to G.S. 50-13.10 shall not be affected by any order entered pursuant to this section. All vested child support arrears shall remain due and owing. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

(a2) A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affidavit shall contain the social security number of the person executing the affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an affidavit of parentage and of any alternatives to the execution of an affidavit of parentage. The mother shall not be excused from making the affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she attests.

(b) At any time after the filing with the district court of an affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court."

SECTION 3. This act becomes effective October 1, 2011, and applies to motions to set aside paternity or motions to set aside affidavits of parentage on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 311
Judiciary II Committee Substitute Adopted 4/28/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S311-CSLB-74 [v.2]

6/14/2011 8:35:31 AM

Short Title: Pretrial Release Violation/Arrest. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS, AND RELATING TO ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. –

(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal ~~offense~~ offense, or has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2), in the officer's presence.

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under ~~G.S. 15A-534.1(a)(2).~~G.S. 15A-534 or G.S. 15A-534.1(a)(2).

(3) Repealed by Session Laws 1991, c. 150.

(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be

detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5."

SECTION 2.(a) G.S. 15A-101.1 is amended by adding a new subdivision to read:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

.....

(3a) "Electronic monitoring" or "electronically monitor" or "satellite-based monitoring" means monitoring with an electronic monitoring device that is not removed from a person's body, that is utilized by the supervising agency in conjunction with a web-based computer system that actively monitors, identifies, tracks, and records a person's location at least once every minute twenty-four hours a day, that has a battery life of at least forty-eight hours without being recharged, that timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all person's being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison."

SECTION 2.(b) G.S. 14-208.18 is amended by adding a new subsection to read:

"(g1) Notwithstanding any provision of this section, a person subject to subsection (a) of this section who is required to wear an electronic monitoring device shall wear an electronic monitoring device that provides exclusion zones around the premises of all elementary and secondary schools in North Carolina."

SECTION 2.(c) By October 1, 2011 the Department of Correction shall replace the electronic monitoring service and equipment currently being used with a provider that offers electronic monitoring equipment and service that provides exclusion zones around the premises of every elementary and secondary school in the State for the protection of children from sex offenders for whom it is unlawful to knowingly be on the premises of elementary and secondary schools pursuant to G.S. 14-208.18.

SECTION 2.(d) The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by June 1, 2012, regarding the implementation of the new electronic monitoring service and equipment and proved the Committee with its evaluation of how the new system is functioning and how it compares with other systems used by the Department for this same purpose.

SECTION 3. Section 1 of this act becomes effective December 1, 2011, and applies to violations of pretrial release conditions occurring on or after that date. Section 2 of this act becomes effective October 1, 2011. This section is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 311
Judiciary II Committee Substitute Adopted 4/28/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S311-PCS15191-LB-74

Short Title: Pretrial Release Violation/Arrest. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS, AND RELATING TO ELECTRONIC TECHNOLOGY IN CRIMINAL PROCESS AND PROCEDURE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. –

(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal ~~offense~~ offense, or has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2), in the officer's presence.

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under ~~G.S. 15A-534.1(a)(2).~~ G.S. 15A-534 or G.S. 15A-534.1(a)(2).

(3) Repealed by Session Laws 1991, c. 150.

(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be

detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5."

SECTION 2.(a) G.S. 15A-101.1 is amended by adding a new subdivision to read:

"**§ 15A-101.1. Electronic technology in criminal process and procedure.**

As used in this Chapter, in Chapter 7A of the General Statutes, in Chapter 15 of the General Statutes, and in all other provisions of the General Statutes that deal with criminal process or procedure:

...

(3a) "Electronic monitoring" or "electronically monitor" or "satellite-based monitoring" means monitoring with an electronic monitoring device that is not removed from a person's body, that is utilized by the supervising agency in conjunction with a Web-based computer system that actively monitors, identifies, tracks, and records a person's location at least once every minute 24 hours a day, that has a battery life of at least 48 hours without being recharged, that timely records and reports or records the person's presence near or within a crime scene or prohibited area or the person's departure from a specified geographic location, and that has incorporated into the software the ability to automatically compare crime scene data with locations of all person's being electronically monitored so as to provide any correlation daily or in real time. In areas of the State where lack of cellular coverage requires the use of an alternative device, the supervising agency shall use an alternative device that works in concert with the software and records location and tracking data for later download and crime scene comparison."

SECTION 2.(b) G.S. 14-208.18 is amended by adding a new subsection to read:

"(g1) Notwithstanding any provision of this section, a person subject to subsection (a) of this section who is required to wear an electronic monitoring device shall wear an electronic monitoring device that provides exclusion zones around the premises of all elementary and secondary schools in North Carolina."

SECTION 2.(c) By October 1, 2011, the Department of Correction shall replace the electronic monitoring service and equipment currently being used with a provider that offers electronic monitoring equipment and service that provides exclusion zones around the premises of every elementary and secondary school in the State for the protection of children from sex offenders for whom it is unlawful to knowingly be on the premises of elementary and secondary schools pursuant to G.S. 14-208.18.

SECTION 2.(d) The Department of Correction shall report to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee by June 1, 2012, regarding the implementation of the new electronic monitoring service and equipment and provide the Committee with its evaluation of how the new system is functioning and how it compares with other systems used by the Department for this same purpose.

SECTION 3. Section 1 of this act becomes effective December 1, 2011, and applies to violations of pretrial release conditions occurring on or after that date. Section 2 of this act becomes effective October 1, 2011. This section is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 2

SENATE BILL 311
Judiciary II Committee Substitute Adopted 4/28/11

Short Title: Pretrial Release Violation/Arrest. (Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW WARRANTLESS ARREST FOR VIOLATION OF PRETRIAL RELEASE CONDITIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. –

(1) Offense in Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal ~~offense~~ offense, or has violated a pretrial release order entered under G.S. 15A-534 or G.S. 15A-534.1(a)(2), in the officer's presence.

(2) Offense Out of Presence of Officer. – An officer may arrest without a warrant any person who the officer has probable cause to believe:

a. Has committed a felony; or

b. Has committed a misdemeanor, and:

1. Will not be apprehended unless immediately arrested, or

2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or

c. Has committed a misdemeanor under G.S. 14-72.1, 14-134.3, 20-138.1, or 20-138.2; or

d. Has committed a misdemeanor under G.S. 14-33(a), 14-33(c)(1), 14-33(c)(2), or 14-34 when the offense was committed by a person with whom the alleged victim has a personal relationship as defined in G.S. 50B-1; or

e. Has committed a misdemeanor under G.S. 50B-4.1(a); or

f. Has violated a pretrial release order entered under ~~G.S. 15A-534.1(a)(2).~~G.S. 15A-534 or G.S. 15A-534.1(a)(2).

(3) Repealed by Session Laws 1991, c. 150.

(4) A law enforcement officer may detain an individual arrested for violation of an order limiting freedom of movement or access issued pursuant to G.S. 130A-475 or G.S. 130A-145 in the area designated by the State Health Director or local health director pursuant to such order. The person may be detained in such area until the initial appearance before a judicial official pursuant to G.S. 15A-511 and G.S. 15A-534.5."

SECTION 2. This act becomes effective December 1, 2011, and applies to violations of pretrial release conditions occurring on or after that date.

SENATE BILL 487:
Disputed Earnest Money/Attorneys Deposit

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 14, 2011
Introduced by:	Sens. Stein, Vaughan, Newton	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 487 permits attorneys who receive disputed funds while acting as a fiduciary to deposit the money with the Clerk of Superior Court after giving the claimants 90 days notice.***

CURRENT LAW: G.S. 93A-12 provides that a licensed real estate broker may deposit disputed earnest money, other than a residential security deposit, with the clerk of court for determination of the rightful owner. The broker must provide notice to the persons claiming ownership that the money is to be deposited and that the person may initiate a special proceeding with the clerk of court to recover the disputed monies. In order to give the parties an opportunity to settle the dispute, the monies may not be deposited until 90 days following notification.

Attorneys who are not also licensed real estate brokers and who receive disputed funds while acting as a fiduciary must either hold the funds until the claimants resolve the issue of ownership, or must institute an action for interpleader and declaratory relief pursuant to G.S. 1A-1, Rule 22.[1]

BILL ANALYSIS: Senate Bill 487 amends G.S. 93A-12 to allow a North Carolina licensed attorney holding disputed funds received while acting as a fiduciary, other than a residential security deposit, to deposit the funds with the clerk of court after notifying the parties claiming ownership and giving them 90 days to resolve the dispute among themselves.

EFFECTIVE DATE: This act is effective when it becomes law.

Bill Patterson, counsel to Senate Judiciary I, substantially contributed to this summary.

S487-SMSU-44(e1) v1

[1] Rule 22. Interpleader.

(a) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims expose or may expose the plaintiff to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of crossclaim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(b) Where funds are subject to competing claims by parties to the action, the court may order the party in possession of the funds either to deposit the funds in an interest bearing account in a bank, savings and loan, or trust company licensed to do business in this State or to deposit the funds with the clerk. If the funds are deposited in a bank, savings and loan, or trust company, the court shall specify the type of interest bearing account to be used. Funds deposited with the clerk shall be invested or deposited as provided in G.S. 7A-112 and G.S. 7A-112.1. Upon determination of the action, the judgment shall provide for disbursement of the principal and interest earned on the funds while so deposited.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE JUNE 14, 2011

S. B. No. 487 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 1, line 23
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "is effective when it becomes
4 law." and substituting "becomes
5 effective October 1, 2011."
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SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

S 1

SENATE BILL 487

Short Title:	Disputed Earnest Money/Attorneys Deposit.	(Public)
Sponsors:	Senators Stein, Vaughan, and Newton.	
Referred to:	Judiciary I.	

April 4, 2011

A BILL TO BE ENTITLED

AN ACT AUTHORIZING ATTORNEYS LICENSED IN THIS STATE TO DEPOSIT DISPUTED EARNEST MONEY WITH THE CLERK OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93A-12 reads as rewritten:

"**§ 93A-12. Disputed monies.**

(a) A real estate broker licensed under this Chapter or an attorney licensed to practice law in this State may deposit with the clerk of court in accordance with this section monies, other than a residential security deposit, the ownership of which are in dispute and that the real estate broker or attorney received while acting in a fiduciary capacity.

(b) The disputed monies shall be deposited with the clerk of court in the county in which the property for which the disputed monies are being held is located. At the time of depositing the disputed monies, the real estate broker or attorney shall certify to the clerk of court that the persons who are claiming ownership of the disputed monies have been notified in accordance with subsection (c) of this section that the disputed monies are to be deposited with the clerk of court and that the persons may initiate a special proceeding with the clerk of court to recover the disputed monies.

...

(d) A real estate broker or attorney shall not deposit disputed monies with the clerk of court until 90 days following notification of the persons claiming ownership of the disputed monies.

...."

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

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

~~(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.~~

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or (3)~~(1) or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release

will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3),~~(1) or (3) and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition ~~(1), (2), or (3).~~(1) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in

custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~ regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 72 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 72-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Wilkerson	NCBA
Kim Crouch	NCBA
Tom Parker	Bob Barker Company
Chuck Johnson	NCPSA
Kelly [illegible]	NAMI NC
Lan Rubright	CJPC
Mildred Spearman	NCAOC
Laura E. [illegible]	NCACC
Rosalie McReynolds	Sen Mckissick
Todd Barlow	NC Advocates for Justice
[illegible]	NCBAA

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Richardson	City of Charlotte
Sandra Chestnut	NC DHHS | CSE
Senator Floyd B. McKissick Jr.	
David McSwain	NCAR
Paul Pulley	NCAJ
Mitch Lorrard	SEANC

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Suzanne Beasley	SEAWC

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary Sub C

DATE: 6-14-11 **Room:** 1425

***Name:** Allie Hobgood

County: Granville

Sponsor: Mr. Crawford

***Name:** Jake Backhouse

County: Wake

Sponsor: Stam

***Name:** John Gavin

County: Randolph

Sponsor: Rep. Brubaker

***Name:**

County:

Sponsor:

***Name:**

County:

Sponsor:

House Sgt-At Arms:

1. **Name:** Billy Jones
2. **Name:** Todd Batchelor
3. **Name:**
4. **Name:**
5. **Name:**
6. **Name:**

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Tuesday, June 14, 2011

The House Judiciary Subcommittee C (Family Law) met on Tuesday, June 14, 2011, at 4:35 p.m. in Room 1425 of the Legislative Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Hackney, Harrison, Insko, Jones, Jordan, Mobley, and Weiss.

Rep. Moore presided and called the meeting to order.

The following bill was considered:

SB 756, Amend Bail Law/Pretrial Release Programs (Senators Clary, East, and Jones, Primary Sponsors). Chair Moore accepted a motion from Rep. R. Brown to place the Proposed Committee Substitute before the committee. Jan Paul, staff, was recognized to explain the bill summary. Senator Debbie Clary was recognized to speak on the bill. Discussion and debate. Public comments were heard from: Phillip Berger, Jr., (DA—17A Prosecutorial District in Rockingham County), Judge Kristin Ruth, (Wake County District Court), Mark Black, (Attorney at Mark Black Law), and Kevin Leonard, (County Commissioners Association). Further discussion and debate. Rep. Insko offered an amendment but has a perfecting amendment to the amendment. The perfecting amendment was adopted. Rep. Cleveland presides and recognizes and amendment offered by Rep. Jordan. The amendment was adopted. Chair Moore recognizes Chuck Johnson, Pretrial Services, to speak. Further discussion and debate. Rep. Hackney was recognized for a motion to adjourn. 5 yes votes and 3 no votes.

The meeting adjourned at 5:40 p.m.

Respectfully submitted,

Representative Tim Moore
Chair

Nancy Garriss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Tuesday, June 14, 2011
Room 1425 LOB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Tuesday, June 14, 2011
TIME: 4:30 p.m..
LOCATION: 1425 LB
COMMENTS: note room number

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **June 14, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

SENATE BILL 756:
Amend Bail Law/Pretrial Release Programs

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 14, 2011
Introduced by:	Sens. Clary, East, Jones	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Second Edition S756-CSTJ-21		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 756 would amend the State's bail laws with regard to pretrial release programs, amend the provision authorizing unsecured appearance bond as a pretrial release condition, amend house arrest and electronic monitoring as a condition of pretrial release, and provide that no State funds may be appropriated to or used for support of a pretrial release program.***

CURRENT LAW: Under G.S. 15A-533, a defendant charged with a noncapital offense must have conditions of pretrial released determined in accordance with G.S. 15A-534. The provisions of G.S. 15A-534 also apply to a defendant charged with a capital offense, if the judge in his or her discretion determines that release is warranted. Drug trafficking and street gang crimes are offenses that are subject to a rebuttable presumption that no condition of release will reasonably assure the appearance of the defendant and the safety of the community; the presumption applies if the offense was committed while the defendant was on pretrial release for another offense and not more than five years has passed since the defendant committed the same type of offense.

Under G.S. 15A-534, in determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- Release the defendant on a written promise to appear.
- Release the defendant upon execution of an unsecured appearance bond in an amount specified by the judicial official. (An unsecured appearance bond is a type of bail in which the accused make a written promise to appear in court, and to pay a specified sum of money if the accused fails to appear as required.)
- Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage, or by at least one solvent surety.
- House arrest with electronic monitoring.

In determining which conditions of pretrial release to impose, the judicial official must take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of the defendant's residence in the community; record of convictions; history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

BILL ANALYSIS: The PCS for Senate Bill 756 would amend the procedure for determining conditions of pretrial release. The PCS would amend the provision authorizing the imposition of unsecured appearance bonds as a pretrial release condition, specifying that the amount may not exceed $25,000 per arrest, and would require a secured appearance bond of at least $1,000 for a defendant placed on electronic monitoring/house arrest.

Under current law, a defendant may be released into the custody of a designated person or organization, and the "organization" may include a pretrial release program. The PCS would eliminate the option of releasing a defendant into the custody of an "organization"; but it provides that if the court has required the execution of a secured appearance bond as a condition of pretrial release, the defendant may elect to be placed in a pretrial release program. The PCS would add a new statute pertaining to pretrial release programs, defined as "an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release." A defendant could be placed in a pretrial release program only if the defendant is unable to execute a secured bond and is held in custody, and at least 48 hours have elapsed from the date and time on the defendant's release order. The judicial official would be required to include the basis for the court's determination concerning placement of the defendant in a pretrial release program. The PCS provides that no State funds may be appropriated to or used for support of a pretrial release program.

EFFECTIVE DATE: The new statute pertaining to pretrial release programs would become effective July 1, 2011. The remainder of the act would become effective December 1, 2011 and apply to actions to determine pretrial release conditions on or after that date.

Brenda Carter, counsel to Senate Judiciary II, substantially contributed to this summary.

S756-SMSU-46(CSTJ-21) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S756-CSTJ-21 [v.6]

6/14/2011 3:38:06 PM

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO AMEND USE OF UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial ~~official.~~ official not to exceed twenty-five thousand dollars ($25,000) per arrest.

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or

DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~ regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The defendant is unable to execute a secured bond as described in G.S. 15A-534(a)(4) and is held in custody.

(2) The judicial official finds as fact that a period of at least 48 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 48-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-16 [v.3]

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Date _____, 2011

Representative Insko

moves to amend the bill on page 4, lines 34 through 35, by rewriting the lines to read:

"(d) Notwithstanding any other provision in this section, a judicial official shall release a defendant upon the defendant's execution of an unsecured appearance bond in an amount specified by the judicial official and shall divert the defendant pursuant to a diversion plan if the defendant has previously been diagnosed with a severe mental illness as defined in G.S. 122C-3(21), or a developmental disability as defined in G.S. 122C-3(12a), or is a substance abuser as defined in G.S. 122C-3(37), and if the defendant's commission of the crime is directly related to the symptoms of the diagnosed condition.

(e) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities, unless the defendant has previously been diagnosed with a several mental illness, a developmental disability, or is a substance abuser as described in subsection (d) of this section.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S756-CSTJ-21 [v.5]

6/14/2011 3:25:37 PM

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial ~~official.~~ official not to exceed twenty-five thousand dollars ($25,000) per arrest.

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or

DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2), or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2), or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~ regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The defendant is unable to execute a secured bond as described in G.S. 15A-534(a)(4) and is held in custody.

(2) The judicial official finds as fact that a period of at least 48 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 48-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

~~(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.~~

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or (3)~~(1) or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release

will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3),~~(1) or (3) and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition ~~(1), (2), or (3).~~(1) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in

custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~ regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 72 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 72-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — June 14, 2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Angie Hamm	WM
Matt Harrell	NCSBA
Kevin Leonard	NCACC
Amy Bason	NCACC
[illegible]	[illegible]
Lynn Tonea	NCGA
Andrew Cagle	NC Sheriffs Assn
Whitney Christenson	Jordan Price
Lao Rubert	CYPC
Keith Richardson	City of Charlotte
[illegible]	NAMI NC

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — 6/14/11 – 4:30 pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chuck Johnson	Pretrial Services Assoc.
DIANNE JONES	RRC
Sharona Stokes	NCBAA
Melissa Seiler	NCBAA
Gwen Mackins	NCBAA
PHIL BERGER JR	DA. DA
Mark Black	NCBAA
[illegible]	[illegible]
David Mason	Wake County Courthouse
Lauren E. Klein	Wake Co. Courthouse
Judge Hunter Rudd	Dist. Ct. Judge

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C — 6/14/11 – 4:30 pm

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sarah Preston	ACLU-NC
Tim KENT	NC Beer & Wine Wholesalers
MARK BIBBS	Bibbs Law Office
Mildred Spearman	NCAOC
[illegible]	KU Tates
Kim Crowell	UCBA
Deveral B Sheffield	

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary Sub C

DATE: 6-14-11 **Room:** 1425

***Name:**

County:

Sponsor:

***Name:**

County:

Sponsor:

***Name:**

County:

Sponsor:

***Name:**

County:

Sponsor:

***Name:**

County:

Sponsor:

***Name:**

County:

Sponsor:

House Sgt-At Arms:

1. **Name:** Ken Kirby
2. **Name:** Todd Batchelor
3. **Name:**
4. **Name:**
5. **Name:**
6. **Name:**

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 15, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 15, 2011, at 12:15 p.m. in Room 1228/1327 of the Legislative Building. The following members were present: Representative Johnathan Rhyne, Chair; Representatives R. Brown, Cleveland, Hackney, Harrison, Insko, Jones, Jordan, and Mobley.

Rep. Rhyne presided and called the meeting to order.

The following bill was considered:

SB 203, Set Aside Child Supp./Limited Circumstances (Senators McKissick and East, Primary Sponsors). Chair Rhyne accepted a motion from Rep. Cleveland to place the Proposed Committee Substitute before the committee. Senator McKissick was recognized to speak on the bill and Rep. Cleveland. Discussion followed. Rep. Cleveland was recognized by Chair Rhyne for a motion of a favorable report to the Proposed Committee Substitute and unfavorable to the original bill.

The meeting adjourned at 12:20 p.m.

Respectfully submitted,

Representative Johnathan Rhyne, Jr.
Chair

Nancy Garriss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 15, 2011
Room 1228 LB

OPENING REMARKS

Representative Johnathan Rhyne, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
SB 203	Set Aside Child Supp./Limited Circumstances.	Senator McKissick Senator East

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 15, 2011
TIME: 12:10 p.m.
LOCATION: 1228/1327 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 203	Set Aside Child Supp./Limited Circumstances.	Senator McKissick Senator East

Respectfully,
Representative T. Moore, Chair
Representative Rhyne, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10 AM** o'clock on **June 15, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
SB 203 A BILL TO BE ENTITLED AN ACT ESTABLISHING A PROCESS TO SET ASIDE AN ORDER OF PATERNITY OR AN AFFIDAVIT OF PARENTAGE UNDER LIMITED CIRCUMSTANCES.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate original Bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 203
Second Edition Engrossed 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S203-CSRV-36 [v.3]

6/15/2011 11:54:51 AM

Short Title: Set Aside Paternity/Child Support. (Public)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS TO SET ASIDE AN ORDER OF PATERNITY OR AN AFFIDAVIT OF PARENTAGE UNDER LIMITED CIRCUMSTANCES, AND TO ALLOW RELIEF FROM A CHILD SUPPORT ORDER WHEN THE OBLIGOR IS NOT THE CHILD'S FATHER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 49-14 reads as rewritten:

"**§ 49-14. Civil action to establish ~~paternity.~~paternity; motion to set aside paternity.**

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding.

...

(h) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an order of paternity may be set aside by a trial court if each of the following applies:

(1) The paternity order was entered as the result of fraud, duress, mutual mistake, or excusable neglect.

(2) Genetic tests establish the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an order of paternity shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage."

SECTION 2. G.S. 110-132 reads as rewritten:

"§ 110-132. Affidavit of parentage and agreement to ~~support.~~motion to set aside affidavit of parentage.

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the rescission and to include in the order specific findings of fact that the request for rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

~~After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.~~

(a1) Paternity established under subsection (a) of this section may be set aside in accordance with subsection (a2) of this section or in accordance with G.S. 50-13.13.

(a2) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set aside by a trial court after 60 days have elapsed if each of the following applies:

(1) The affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect.

(2) Genetic tests establish that the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed for rescission shall be on the moving party. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

(a3) A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for

orders of the court in such cases. The written affidavit shall contain the social security number of the person executing the affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an affidavit of parentage and of any alternatives to the execution of an affidavit of parentage. The mother shall not be excused from making the affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she attests.

(b) At any time after the filing with the district court of an affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court."

SECTION 3. Article 1 of Chapter 50 of the General Statutes is amended by adding the following new section to read:

"**§ 50-13.13. Motion or claim for relief from child support order based on finding of nonpaternity.**

(a) Notwithstanding G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an individual who, as the father of a child, is required to pay child support under an order that was entered by a North Carolina court pursuant to Chapter 49, 50, 52C, or 110 of the General Statutes, or under an agreement between the parties pursuant to G.S. 52-10.1 or otherwise, and that is subject to modification by a North Carolina court under applicable law may file a motion or claim seeking relief from a child support order as provided in this section.

(b) A motion or claim for relief under this section shall be filed as a motion or claim in the cause in the pending child support action, or as an independent civil action, and shall be filed within one year of the date the moving party knew or reasonably should have known that he was not the father of the child. The motion or claim shall be verified by the moving party and shall state all of the following:

(1) The basis, with particularity, on which the moving party believes that he is not the child's father.

(2) The moving party has not acknowledged paternity of the child or acknowledged paternity without knowing that he was not the child's biological father.

(3) The moving party has not adopted the child, has not legitimated the child pursuant to G.S. 49-10, 49-12, or 49-12.1, or is not the child's legal father pursuant to G.S. 49A-1.

(4) The moving party did not act to prevent the child's biological father from asserting his paternal rights regarding the child.

(c) The court may appoint a guardian ad litem pursuant to Rule 17 to represent the interest of the child in connection with a proceeding under this section.

(d) Notwithstanding G.S. 8-50.1(b1), the court shall, upon motion or claim of a party in a proceeding under this section, order the moving party, the child's mother, and the child to submit to genetic paternity testing if the court finds that there is good cause to believe that the moving party is not the child's father and that the moving party may be entitled to relief under this section. If genetic paternity testing is ordered, the provisions of G.S. 8-50.1(b1) shall govern the admissibility and weight of the genetic test results. The moving party shall pay the costs of genetic testing. If a party fails to comply with an order for genetic testing without good cause, the court may hold the party in civil or criminal contempt or impose appropriate sanctions under G.S. 1A-1, Rule 37, of the North Carolina Rules of Civil Procedure, or both. Nothing in this subsection shall be construed to require additional genetic paternity testing if paternity has been set aside pursuant to G.S. 49-14 or G.S. 110-132.

(e) The moving party's child support obligation shall be suspended while the motion or claim is pending before the court if the support is being paid on behalf of the child to the State, or any other assignee of child support, where the child is in the custody of the State or other assignee, or where the moving party is an obligor in a IV-D case as defined in G.S. 110-129(7).

The moving party's child support obligation shall not be suspended while the motion or claim is pending before the court if the support is being paid to the mother of the child.

(f) The court may grant relief from a child support order under this section if paternity has been set aside pursuant to G.S. 49-14 or G.S. 110-132; or if the moving party proves by clear and convincing evidence, and the court, sitting without a jury, finds both of the following:

(1) The results of a valid genetic test establish that the moving party is not the child's biological father.

(2) The moving party either (i) has not acknowledged paternity of the child or (ii) acknowledged paternity without knowing that he was not the child's biological father. For purposes of this section, 'acknowledging paternity' means that the moving party has done any of the following:

a. Publicly acknowledged the child as his own and supported the child while married to the child's mother.

b. Acknowledged paternity in a sworn written statement, including an affidavit of parentage executed under G.S. 110-132(a) or G.S. 130A-101(f).

c. Executed a consent order, a voluntary support agreement under G.S. 110-132 or G.S. 110-133, or any other legal agreement to pay child support as the child's father.

d. Admitted paternity in open court or in any pleading.

(g) If the court determines that the moving party has not satisfied the requirements of this section, the court shall deny the motion or claim, and all orders regarding the child's paternity, support, or custody shall remain enforceable and in effect until modified as otherwise provided by law. If the court finds that the moving party did not act in good faith in filing a motion or claim pursuant to this section, the court shall award reasonable attorneys' fees to the prevailing party. The court shall make findings of fact and conclusions of law to support its award of attorneys' fees under this subsection.

(h) If the court determines that the moving party has satisfied the requirements of this section, the court shall enter an order, including written findings of fact and conclusions of law, terminating the moving party's child support obligation regarding the child. The court may tax as costs to the mother of the child the expenses of genetic testing.

Any unpaid support due prior to the filing of the motion or claim is due and owing. If the court finds that the mother of the child used fraud, duress, or misrepresentation, resulting in the belief on the part of the moving party that he was the father of the child, the court may order the mother of the child to reimburse any child support amounts paid and received by the mother after the filing of the motion or claim. The moving party has no right to reimbursement of past child support paid on behalf of the child to the State, or any other assignee of child support, where the child is in the custody of the State or other assignee, or where the moving party is an obligor in a IV-D case as defined in G.S. 110-129(7).

If the child was born in North Carolina and the moving party is named as the father on the child's birth certificate, the court shall order the clerk of superior court to notify the State Registrar of the court's order pursuant to G.S. 130A-118(b)(2). If relief is granted under this subdivision, a party may, to the extent otherwise provided by law, apply for modification of or relief from any judgment or order involving the moving party's paternity of the child.

(i) Any servicemember who is deployed on military orders, and is subject to the protections of the Servicemembers Civil Relief Act, shall have the period for filing a motion pursuant to subsection (b) of this section tolled during the servicemember's deployment. If the period remaining allowed for the filing of the motion following the servicemember's redeployment is less than 30 days, then the servicemember shall have 30 days for filing the motion."

SECTION 4. This act becomes effective January 1, 2012, and applies to motions or claims for relief filed on or after that date. Notwithstanding the provision in Section 3 of this act requiring motions or claims to be filed within one year of discovery that the moving party is not the father, any person who would otherwise be eligible to file a motion or claim may file a motion or claim pursuant to this act prior to January 1, 2013.

SENATE BILL 203
Second Edition Engrossed 6/7/11

Short Title:	Set Aside Child Supp./Limited Circumstances.	(Public)
Sponsors:	Senators McKissick, East; Allran, Atwater, Bingham, Clary, Dannelly, Graham, Hartsell, Hise, Jones, and Vaughan.	
Referred to:	Rules and Operations of the Senate.	

March 7, 2011

A BILL TO BE ENTITLED

AN ACT ESTABLISHING A PROCESS TO SET ASIDE AN ORDER OF PATERNITY OR AN AFFIDAVIT OF PARENTAGE UNDER LIMITED CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 49-14 reads as rewritten:

"**§ 49-14. Civil action to establish ~~paternity.~~paternity; motion to set aside paternity.**

(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding.

(b) Proof of paternity pursuant to this section shall be by clear, cogent, and convincing evidence.

(c) No such action shall be commenced nor judgment entered after the death of the putative father, unless the action is commenced either:

(1) Prior to the death of the putative father;

(2) Within one year after the date of death of the putative father, if a proceeding for administration of the estate of the putative father has not been commenced within one year of his death; or

(3) Within the period specified in G.S. 28A-19-3(a) for presentation of claims against an estate, if a proceeding for administration of the estate of the putative father has been commenced within one year of his death.

Any judgment under this subsection establishing a decedent to be the father of a child shall be entered nunc pro tunc to the day preceding the date of death of the father.

(d) If the action to establish paternity is brought more than three years after birth of a child or is brought after the death of the putative father, paternity shall not be established in a contested case without evidence from a blood or genetic marker test.

(e) Either party to an action to establish paternity may request that the case be tried at the first session of the court after the case is docketed, but the presiding judge, in his discretion, may first try any pending case in which the rights of the parties or the public demand it.

(f) When a determination of paternity is pending in a IV-D case, the court shall enter a temporary order for child support upon motion and showing of clear, cogent, and convincing evidence of paternity. For purposes of this subsection, the results of blood or genetic tests shall constitute clear, cogent, and convincing evidence of paternity if the tests show that the probability of the alleged parent's parentage is ninety-seven percent (97%) or higher. If

paternity is not thereafter established, then the putative father shall be reimbursed the full amount of temporary support paid under the order.

(g) Invoices for services rendered for pregnancy, childbirth, and blood or genetic testing are admissible as evidence without requiring third party foundation testimony and shall constitute prima facie evidence of the amounts incurred for the services or for testing on behalf of the child.

(h) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an order of paternity may be set aside by a trial court if each of the following applies:

(1) The paternity order was entered as the result of fraud, duress, mutual mistake, or excusable neglect.

(2) Genetic tests establish the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an order of paternity shall be on the moving party. Child support responsibilities of the parties may not be suspended while the motion is pending, except for good cause shown. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the order of paternity was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the order of paternity and terminate all future child support obligations of the putative father with regard to the minor child whose parentage is at issue. In determining whether the order of paternity should be set aside, the court may consider the best interests of the child. If the court sets aside an order of paternity pursuant to this section, no party may be required to reimburse past child support paid on behalf of the child to the custodial parent, the State, or any other assignee of child support. Any past-due child support payment vested pursuant to G.S. 50-13.10 shall not be affected by any order entered pursuant to this section. All vested child support arrears shall remain due and owing. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage."

SECTION 2. G.S. 110-132 reads as rewritten:

"**§ 110-132. Affidavit of parentage and agreement to ~~support.~~motion to set aside affidavit of parentage.**

(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written affidavits of parentage executed by the putative father and the mother of the dependent child shall constitute an admission of paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

(1) 60 days of the date the document is executed, or

(2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the rescission and to include in the order specific findings of fact that the request for rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the State Registrar of Vital Statistics. Upon receipt of an order of rescission, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to

present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

~~After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.~~

(a1) Notwithstanding the time limitations of G.S. 1A-1, Rule 60 of the North Carolina Rules of Civil Procedure, or any other provision of law, an affidavit of parentage may be set aside by a trial court after 60 days have elapsed only if each of the following applies:

(1) The affidavit of parentage was entered as the result of fraud, duress, mutual mistake, or excusable neglect.

(2) Genetic tests establish that the putative father is not the biological father of the child.

The burden of proof in any motion to set aside an affidavit of parentage after 60 days allowed for rescission shall be on the moving party. Child support responsibilities of the parties may not be suspended while the motion is pending, except for good cause shown. Upon proper motion alleging fraud, duress, mutual mistake, or excusable neglect, the court shall order the child's mother, the child whose parentage is at issue, and the putative father to submit to genetic paternity testing pursuant to G.S. 8-50.1(b1). If the court determines, as a result of genetic testing, the putative father is not the biological father of the child and the affidavit of parentage was entered as a result of fraud, duress, mutual mistake, or excusable neglect, the court may set aside the affidavit of parentage and terminate all future child support obligations of the putative father with regard to the minor child whose parentage is at issue. In determining whether the affidavit of parentage should be set aside, the court may consider the best interests of the child. If the court sets aside an affidavit of parentage pursuant to this section, no party may be required to reimburse past child support paid on behalf of the child to the custodial parent, the State, or any other assignee of child support. Any past-due child support payment vested pursuant to G.S. 50-13.10 shall not be affected by any order entered pursuant to this section. All vested child support arrears shall remain due and owing. Nothing in this subsection shall be construed to affect the presumption of legitimacy where a child is born to a mother and the putative father during the course of a marriage.

(a2) A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affidavit shall contain the social security number of the person executing the affidavit. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affidavits and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an affidavit of parentage and of any alternatives to the execution of an affidavit of parentage. The mother shall not be excused from making the affidavit on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she attests.

(b) At any time after the filing with the district court of an affidavit of parentage, upon the application of any interested party, the court or any judge thereof shall cause a summons signed by him or by the clerk or assistant clerk of superior court, to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause, if any he has, why the court should not enter an order for the support of the child by periodic payments, which order may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action under this subsection on the affidavit of parentage previously filed with said court. The court may order the responsible parents in a IV-D establishment case to perform a job search, if the responsible parent is not incapacitated. This includes IV-D cases in which the responsible parent is a noncustodial mother or a noncustodial father whose affidavit of parentage has been filed with the court or when paternity is not at issue for the child. The court may further order the responsible parent to participate in the work activities, as defined in 42 U.S.C. § 607, as the court deems appropriate. The amount of child support payments so ordered shall be determined as provided in G.S. 50-13.4(c). The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court."

SECTION 3. This act becomes effective October 1, 2011, and applies to motions to set aside paternity or motions to set aside affidavits of parentage on or after that date.

VISITOR REGISTRATION SHEET

Judiciary Sub C — 6-15-2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sandra Chestnut	DHHS - Child Support
CS Hollis	YSS
[illegible]	[illegible]
Paul Hickman	Fairway
Gene Causby	NCSLA
Colleen Kotlowski	KLG
Larry A Powell	B.B.A.
[illegible]	NCBAA
Todd Barlow	NC Advocates for Justice
[illegible]	NCWC
Bill Rue	NC Justice Center
Paul Stam	NCBA

VISITOR REGISTRATION SHEET

Judiciary SUB C — 6-15-2011

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thom Moore	Tidal Wave
BRUCE THOMPSON	PARKER POE
Heather Barrett	Williams Mullen
John Hardison	MFS
Ken Melton	K. M. A
Robbie Moore	Riley Outdoor
John Mayer	P.J. Group
Mark Blue	NCBIA
MIKE WATERS	NCRPA
Paul Thorn	NCFB

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 15, 2011

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 15, 2011, at 5:10 p.m. in around the desk of Rep. Moore in the House Chamber. The following members were present: Representative Tim Moore, Chair; Representative Johnathan Rhyne, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Jones, Jordan, and Weiss.

Rep. Moore presided and called the meeting to order.

The following bill was considered:

SB 679, Castle Doctrine/Amend Firearms Laws (Senator Newton, Primary Sponsor). Rep. Hackney was recognized for a motion to place the Proposed Committee Substitute before the committee. Rep. Rhyne was recognized to explain the bill. Chair Moore accepted a motion from Rep. Hackney for a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. With the majority in favor, the motion carried.

The meeting adjourned at 5:14 p.m.

Respectfully submitted,

Representative Tim Moore
Chair

Nancy Gariss
Committee Clerk

2011 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore, Rhyne (Chairs) for the Judiciary Subcommittee C.

☐Committee Substitute for
SB 679 A BILL TO BE ENTITLED AN ACT TO AMEND THE CASTLE DOCTRINE, TO ALLOW PERSONS WITH CONCEALED HANDGUN PERMITS TO CARRY A HANDGUN IN A PARK, TO AUTHORIZE THE PURCHASE OF RIFLES, SHOTGUNS AND AMMUNITION IN OTHER STATES, TO IMPOSE CRIMINAL PENALTIES FOR PROVIDING FALSE INFORMATION IN CONNECTION WITH FIREARM OR AMMUNITION TRANSFER, AND TO AUTHORIZE DISTRICT ATTORNEYS, ASSISTANT DISTRICT ATTORNEYS, OR THEIR INVESTIGATORS WHO HAVE A VALID CONCEALED HANDGUN PERMIT TO CARRY A CONCEALED WEAPON ON CERTAIN PREMISES OR IN CERTAIN CIRCUMSTANCES.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒With a favorable report as to the House committee substitute bill, which changes the title unfavorable as to the Senate Committee Substitute Bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

SENATE BILL 679:
Deeds of Trust/Modernize Procedures

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 15, 2011
Introduced by:	Sen. Newton	**Prepared by:**	Karen Cochrane-Brown
Analysis of:	PCS to Third Edition S679-CSRO-29		Staff Attorney

SUMMARY: ***The PCS for Senate Bill 679 makes numerous technical changes to Chapter 45 regarding mortgages and deeds of trust. The bill makes revisions and additions to Article 4 relating to "Satisfaction", Article 7 relating to "Future Advances", and Article 9 relating to "Equity Lines of Credit". The bill also makes a number of conforming changes.***

BILL ANALYSIS:

Revisions to Article 4: "Satisfaction"

Sections 3 through 14 of the bill address a wide range of issues relating to loan payoffs and the satisfaction of deeds of trust that have arisen since the 2005 enactment of the North Carolina Mortgage Satisfaction Act, including:

- Revising and updating definitions.
- Permitting rescission of a release that has been erroneously recorded.
- Modifying payoff statement statute to include requests for short-pay statements.
- Permitting a settlement agent to require a lender to temporarily suspend a borrower's ability to obtain additional credit in anticipation of a sale or new loan.
- Providing a form for partial releases.
- Permitting lenders to declare that certain obligations are no longer secured by a deed of trust.
- Establishing new "life of lien" rules.
- Adding to the list of documents the register of deeds must index.
- Providing for the automatic release of property from "ancillary security instruments".

A new section is also added to the law clarifying that a trustee is not a required party in most matters relating to a deed of trust, other than a foreclosure.

Revisions to Article 7: "Future Advances"

Sections 16 through 19 revise provisions dealing with deeds of trust that secure future advances and future obligations, to:

- Make it clear that the obligations secured by a future advance deed of trust can be specifically or generally identified, described or referenced in the deed of trust.
- Address treatment of the outstanding balance to the extent it exceeds the maximum principal amount that may be secured by the deed of trust at any one time.

- Clarify that (i) accrued interest and certain payments made, sums advanced, and expenses incurred by the lender to protect the collateral and the lender's lien position are secured by the deed of trust with a priority as of the date the deed of trust was recorded, and (ii) that those sums are not included in the calculation of the principal amount that may be secured by the deed of trust at any one time.

Revisions to Article 9: "Equity Lines of Credit"

Sections 20 through 27 revise provisions dealing with equity lines of credit, including:

- Revising and expanding the definitions in G.S. 45-81.
- Moving the prohibition against prepayment penalties from G.S. 45-81(c) to its own separate section, G.S. 45-82.4.
- Clarifying that (i) accrued interest and certain payments made, sums advanced, and expenses incurred by the lender to protect the collateral and the lender's lien position are secured by the deed of trust with a priority as of the date the deed of trust was recorded, and (ii) that those sums are not included in the calculation of the principal amount that may be secured by the deed of trust at any one time.
- Refining the procedures in G.S. 45-82.1 for extending the period of time within which future advances can be made.
- Permitting the borrower and certain persons acting on the borrower's behalf to request the termination of an equity line of credit.
- Permitting the borrower, certain persons acting on the borrower's behalf, the property owner, and certain subordinate lien holders to bar subsequent future advances obtained by the borrower from being secured by an existing deed of trust. The new section also provides model forms for that purpose.

Section 28 of the bill reorganizes and expands the list of documents that should be indexed by the register of deeds as "subsequent instruments".

EFFECTIVE DATE: This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 679
Judiciary II Committee Substitute Adopted 6/7/11
Third Edition Engrossed 6/9/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S679-CSRO-29 [v.1]

6/15/2011 12:57:11 PM

Short Title: Deeds of Trust/Modernize Procedures. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND ENACT CERTAIN PROVISIONS REGARDING DEEDS OF TRUST, INCLUDING RELEASES, SHORT SALES, FUTURE ADVANCE PROVISION TERMINATIONS AND SATISFACTIONS, TERMINATIONS AND SATISFACTIONS FOR EQUITY LINE LIENS, RELEASE OF ANCILLARY DOCUMENTS, ELIMINATING TRUSTEE OF DEED OF TRUST AS NECESSARY PARTY FOR CERTAIN TRANSACTIONS AND LITIGATION, AND INDEXING OF SUBSEQUENT INSTRUMENTS RELATED THERETO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-9 reads as rewritten:

"**§ 24-9. Loans exempt from rate and fee limitations.**

...

(c) The provisions of G.S. 24-1.2A, 24-11, and 24-11.1 shall not apply to equity lines of credit offered by banks. Except as provided in this subsection and notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate and fees and other charges in any amount that the borrower agrees to pay in connection with an equity line of credit. However, an equity line of credit made by a bank shall be subject to the following, to the extent otherwise applicable:

...

(3) Notwithstanding the limitation against prepayment penalties contained in ~~G.S. 45-81(c),~~ G.S. 45-82.4, a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:

...."

SECTION 2. G.S. 45-10 reads as rewritten:

"**§ 45-10. Substitution of trustees in mortgages and deeds of trust.**

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other

instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted ~~trustee,~~ trustee or a holder or owner of any or all of the obligations secured thereby, by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes.

...

(c) If the trustee named in a deed of trust is also the beneficiary named in that deed of trust, the instrument shall be deemed to be a deed of trust, and any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust."

SECTION 3. G.S. 45-36.4 reads as rewritten:

"**§ 45-36.4. Definitions.**

As used in this Article, the following terms mean:

...

(1a) Borrower. – A person primarily liable for payment or performance of the obligation secured by the real property described in a security instrument.

(1b) Credit suspension directive. – A notification given to a secured creditor pursuant to G.S. 45-36.7A directing the secured creditor to suspend temporarily a borrower's right and ability to obtain additional credit advances in anticipation of the imminent sale of, or the imminent making of a new loan to be secured by, real property then encumbered by an existing security instrument when the anticipated transaction will involve either the satisfaction of the existing security instrument or the release of the real property from the lien of the existing security instrument.

...

(5) Entitled person. – ~~A person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.~~A person who:

a. Is a borrower;

b. Is a landowner;

c. Has contracted to purchase real property encumbered by an existing security instrument;

d. Has made or has committed to make a loan that is secured or is to be secured by real property encumbered by an existing security instrument;

e. Is a title insurance company authorized pursuant to Article 26 of Chapter 58 of the General Statutes to issue title insurance policies in the State of North Carolina that has insured or has committed to insure title to real property encumbered by an existing security instrument;

f. Is the foreclosing trustee or the high bidder in a foreclosure sale involving real property encumbered by an existing security instrument;

g. Is a qualified lien holder; or

h. Is an attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when:

1. The attorney, bank, savings and loan association, savings bank, or credit union is or will be responsible for the disbursement of funds in connection with the sale of, or a new

loan secured by, property then encumbered by an existing security instrument; and

2. A requirement of the sale or new loan transaction is or will be that the property be conveyed or encumbered free and clear of the lien of the existing security instrument.

...

(7) Landowner. – A person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real ~~property.~~property or the trustee under a deed of trust.

...

(11) Payoff statement. – A document containing the information specified in ~~G.S. 45-36.7(d).~~G.S. 45-36.7(e).

...

(12a) Qualified lien holder. – A person who holds or is the beneficiary of a security interest in or lien on real property encumbered by an existing security instrument, but only if that person's security interest in or lien on the real property arises from a mortgage or deed of trust that is subordinate in priority to the lien of the existing security instrument. The term does not include a trustee under a deed of trust.

...

(19a) Short-pay amount. – The sum necessary to obtain the release of all or a specific portion of the real property from the lien of a security instrument without satisfying the secured obligation in full.

(19b) Short-pay statement. – A document containing the information specified in G.S. 45-36.7(e1).

...

(23) Trustee. – The trustee or substitute then serving as such under the terms of a deed of trust."

SECTION 4. G.S. 45-36.6 reads as rewritten:

"**§ 45-36.6. Document of rescission: effect; liability for wrongful recording.**

(a) ~~In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.~~Definitions. – The following definitions apply in this section:

(1) Document of rescission. – A document that rescinds either (i) a release that was recorded in error or (ii) the erroneous satisfaction of a security instrument.

(2) Release. – A document that either (i) releases property from the lien of a security instrument or (ii) indicates that an obligation is no longer secured by a security instrument.

(b) ~~If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if~~ If a release is recorded in error or a security instrument is erroneously satisfied of ~~record~~ record, ~~erroneously by any other means, the person or~~ then the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document of rescission either (i) ~~rescinds an erroneously recorded~~ rescinds a release that was recorded in error and deprives the release of

any effect or (ii) ~~satisfaction or affidavit and~~ rescinds the erroneous satisfaction of record of the security instrument and reinstates the security instrument.

(c) A recorded document of rescission has no effect on the rights of a person that:

(1) Records an interest in the real property described in a security instrument after the recording of ~~the satisfaction or affidavit of satisfaction of the security instrument~~ a release that was recorded in error or the erroneous satisfaction of record of the security instrument ~~by other means~~ and before the recording of the document of rescission; and

(2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.

(d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.

(e) A document is a document of rescission if it does all of the following:

(1) Identifies the related security instrument, including the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) If the document of rescission is intended to rescind a release that was recorded in error, (i) identifies the release that was recorded in error by its recording data and the office in which it is recorded, (ii) states that the release was recorded in error, and (iii) states that the release is rescinded.

(3) If the document of rescission is intended to rescind the erroneous satisfaction of record of a security instrument, (i) identifies the satisfaction document that was recorded in error by its recording data and the office in which it is recorded, (ii) states that the security instrument was erroneously satisfied of record, and (iii) states that the satisfaction of the security instrument is rescinded and the security instrument reinstated.

(4) States that the person signing the document of rescission is either (i) the secured creditor or (ii) the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record.

(5) Is signed and acknowledged as required by law for a conveyance of an interest in real property.

(f) The register of deeds shall accept a document of rescission for recording unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The required recording fee is not paid.

(3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property by either the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any document of rescission or (ii) the authority of the person executing any document of rescission to do so.

(g) No particular phrasing is required for a document of rescission that rescinds a release that was recorded in error. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (e) of this section:

"DOCUMENT OF RESCISSION

(G.S. 45-36.6(e))

The security instrument to which this Document of Rescission relates is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This Document of Rescission rescinds the release recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina. The release was recorded in error, is hereby rescinded, and is declared to be of no effect.

The undersigned is: (check applicable box)

_____ The secured creditor in the security instrument identified above.

_____ The person who caused the release to be recorded in error.

Date: _____

_____

Signature of secured creditor or person who caused the release to be recorded in error

[Acknowledgment before officer authorized to take acknowledgments]"

(h) No particular phrasing is required for a document of rescission that rescinds the erroneous satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.6(e):

"DOCUMENT OF RESCISSION

(G.S. 45-36.6(e))

The security instrument to which this Document of Rescission relates is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

The security instrument was erroneously satisfied of record by that satisfaction document recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina. The satisfaction of the security instrument is hereby rescinded, the security instrument is reinstated, and the security instrument is declared to be in full force and effect.

The undersigned is: (check applicable box)

_____ The secured creditor in the security instrument identified above.

_____ The person who caused the security instrument to be satisfied of record erroneously.

Date: _____

_____

Signature of secured creditor or person who caused the security instrument to be satisfied of record erroneously

[Acknowledgment before officer authorized to take acknowledgments]"."

SECTION 5. G.S. 45-36.7 reads as rewritten:

"**§ 45-36.7. Payoff and short-pay ~~statement;~~ statements; request and content.**

(a) An entitled person, or an agent authorized by an entitled person to request a payoff ~~statement,~~ or a short-pay statement, may give to the secured creditor a notification requesting a payoff statement ~~for a specified payoff date not more than 30 days after the notification is given.~~ or a short-pay statement. The notification must contain all of the following:

...

(6) Whether the request is for a payoff statement or a short-pay statement.

(7) If the request is for a payoff statement, the specified payoff date, which may not be more than 30 days after the notification is given.

(8) If the request is for a short-pay statement, (i) the specified short-pay date, which may not be more than 30 days after the notification is given, (ii) a clear statement as to whether the request is for the short-pay amount required to release all of the real property described in the security instrument or only a portion of that property, and (iii) if the request is for the short-pay amount required to release only a portion of the real property described in the security instrument, a description of the specific real property to be released upon payment of the short-pay amount.

(b) If a notification under subsection (a) of this section directs the secured creditor to send the payoff statement or a short-pay statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) A person who gives to a secured creditor a notification requesting a payoff statement or a short-pay statement thereby represents that the person is an entitled person or the authorized agent of an entitled person. A secured creditor may rely on that representation in providing a payoff statement or a short-pay statement unless the secured creditor knows that the requesting person is neither an entitled person nor the authorized agent of an entitled person. A secured creditor has no duty to make inquiry as to whether, or to verify that, the person requesting a payoff statement or a short-pay statement is an entitled person or the authorized agent of an entitled person.

(d) Within 10 days after the effective date of a notification that complies with subsection (a) of this section, the secured creditor shall issue a payoff statement or a short-pay statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff statement or a short-pay statement to the entitled person or the authorized agent may not claim that the notification did not satisfy subsection (a) of this section. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement or a short-pay statement but shall give (i) a notification of the assignment to the person to whom the payoff statement or a short-pay statement otherwise would have been sent, providing the name and address of the assignee, or (ii) a notification to the person to whom the payoff statement or a short-pay statement otherwise would have been sent, stating that the recipient claims no interest in the security instrument or the secured obligation, that the secured obligation was assigned, but that the identity and address of the assignee is not known.

...

(e1) A short-pay statement must contain:

(1) The information reasonably necessary to calculate the short-pay amount as of the requested short-pay date, including the per diem interest amount, if any;

(2) The payment cutoff time, if any, the address or place where payment of the short-pay amount must be made, and any limitation as to the authorized method of payment;

(3) Any conditions precedent that must be satisfied to obtain the release of the property identified in the request for the short-pay statement from the lien of the security instrument; and

(4) Confirmation of the specific real property to be released from the lien of the security instrument upon receipt of the timely payment of the short-pay amount and satisfaction of the other conditions precedent to the release of that property.

Unless the short-pay statement expressly provides otherwise, all persons liable for payment or performance of the obligations secured by the security instrument will remain liable for the secured obligations to the extent the short-pay amount is not sufficient to satisfy the secured obligations in full.

(f) A payoff statement or a short-pay statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff ~~statement.~~statement or a short-pay statement.

(g) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day. A secured creditor may not qualify a short-pay amount or state that it is subject to change before the short-pay date unless the short-pay statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated short-pay amount at no charge and to obtain that updated short-pay amount during the secured creditor's normal business hours on the short-pay date or the immediately preceding business day.

(h) A secured creditor must provide upon request one payoff statement or one short-pay statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars ($25.00) for each additional payoff statement and one hundred dollars ($100.00) for each additional short-pay statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount or short-pay amount under subsection ~~(f)~~ (g) of this section or a corrected payoff statement or short-pay statement under G.S. 45-36.8(a).

(i) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement or a short-pay statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) of this section does not send a timely payoff statement that substantially complies with subsection ~~(d)~~ (e) of this ~~section,~~ section or a short-pay statement that substantially complies with subsection (e1) of this section, the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorneys' fees and costs.

(k) This section does not apply unless (i) the notification requesting a payoff statement is given on or after ~~October 1, 2005.~~ October 1, 2005, and (ii) the notification requesting a short-pay statement is given on or after October 1, 2011."

SECTION 6. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-36.7A. Credit suspension directives.**

(a) A credit suspension directive may be given to a secured creditor by any of the following:

(1) Any borrower.

(2) The legal representative of any borrower.

(3) The attorney for any borrower.

(4) An attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by an existing security instrument; (ii) a requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the lien of the existing security instrument; and (iii) the credit suspension directive is given to the secured creditor contemporaneously with a notification requesting a payoff statement or a short-pay statement in anticipation of and in preparation for the imminent settlement of the sale or new loan transaction.

(b) A credit suspension directive must contain all of the following:

(1) The name and authority of the person giving the directive.

(2) Sufficient information to enable the creditor to identify the secured obligation, the identity of the borrower, and the real property encumbered by the security interest.

(3) The specified payoff date, which may not be more than 30 days after the notification is given.

(4) A clear and unambiguous directive to the secured creditor to suspend through and including the payoff date the borrower's right and ability to obtain any additional credit advances which, if made, would be secured by the security instrument.

(c) If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall also (i) give a copy of the credit suspension directive to the borrower and (ii) provide an additional notification to the borrower that provides substantially as follows:

"NOTICE TO BORROWER

You have a loan with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We will be responsible for disbursing funds in connection with a scheduled sale of the property or a new loan that will be secured by the property. A requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your loan.

As permitted by North Carolina law, we are sending the (enclosed/attached/following/foregoing) notification to your lender directing that it temporarily suspend your right and ability to obtain credit advances in anticipation of the settlement of the sale or loan. The notification accompanies a request asking

the amount that must be sent to your lender to pay your loan in full and cancel the mortgage or deed of trust that secures your loan (or, if your loan will not be paid in full, to release the property from the mortgage or deed of trust that secures your loan). The information your lender provides us may be inaccurate if you obtain additional credit advances before the scheduled settlement date of the sale or new loan transaction.

When your lender receives our directive, it will temporarily suspend your right and ability to obtain credit advances. The period of suspension will continue through and including (anticipated payoff date), the anticipated payoff date, regardless of whether the settlement of the sale or new loan transaction occurs as scheduled. The suspension will not affect your responsibility to continue making payments to your lender during the suspension period. You should not attempt to obtain additional credit advances from your lender during the suspension period.

You may instruct us at any time during the suspension period to withdraw the credit suspension directive we are sending your lender, and we are required by law to comply. However, if you do so, you may jeopardize the settlement of the sale or new loan transaction because the payoff or release information provided by your lender may become inaccurate.

When proceeds from a sale or new loan transaction are used to pay an existing loan in full, lenders typically close the loan account, thereby terminating their borrower's ability to obtain additional credit advances. You should contact your lender to determine whether you will be able to obtain additional credit advances after the settlement of the sale or new loan transaction.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)"

(d) Upon receipt of a credit suspension directive, a secured creditor shall:

(1) Subject to subsection (e) of this section, suspend the borrower's right and ability to obtain credit advances which, if made, would be secured by the security instrument. The period of suspension shall continue through and including the payoff date stated in the credit suspension directive.

(2) Apply all sums subsequently paid during the period of suspension by or on behalf of the borrower in connection with the secured obligation, including sums paid to the secured creditor by a person responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by a security instrument, to the satisfaction of the secured obligation, regardless of whether the amount or amounts paid are sufficient to pay the secured obligation and other sums secured by the security instrument in full. Sums paid to the secured creditor in excess of the amount required to pay the secured obligation and other sums secured by the security instrument in full shall be refunded by the secured creditor to or at the direction of the person who paid the excess amount.

(e) Notwithstanding a secured creditor's receipt of a credit suspension directive, a secured creditor may do any of the following, all of which shall be secured by the security instrument:

(1) The secured creditor may advance sums and incur expenses (i) for insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the security instrument, (iii) to preserve and protect the value or condition of the real property encumbered by the security instrument, or to complete the construction of improvements on the real property encumbered by the security instrument.

(2) The secured creditor may permit the borrower to obtain a credit advance, but only if the credit advance was initiated or approved before the secured creditor received the credit suspension directive.

(f) If the person giving a credit suspension directive is not a borrower, then the person giving a credit suspension directive shall be conclusively deemed the borrower's agent acting with full authority from the borrower to issue the credit suspension directive on the borrower's behalf.

(g) A credit suspension directive may be withdrawn at any time by the person who gave the directive. If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall promptly notify the secured creditor that the credit suspension directive is withdrawn (i) if instructed by the borrower at any time to withdraw the directive or (ii) if the anticipated sale or new loan transaction is cancelled. Upon receipt of a notice from the person who originally gave the credit suspension directive that the credit suspension directive is withdrawn, the secured creditor may reinstate the borrower's right and ability to obtain credit advances."

SECTION 7. G.S. 45-36.8 reads as rewritten:

"**§ 45-36.8. Understated payoff ~~statement:~~statement or short-pay statement: correction; effect.**

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement or the short-pay amount it provided in a short-pay statement was understated, the creditor may send a corrected payoff ~~statement.~~or short-pay statement. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement or short-pay statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount or a short-pay statement containing an understated short-pay amount may not deny the accuracy of the payoff amount or short-pay amount as against any person that reasonably and detrimentally relies upon the understated payoff ~~amount.~~amount or short-pay amount.

(c) This Article does not:

(1) Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount or a short-pay amount from any person liable for payment of the secured obligation; or

(2) Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this Article."

SECTION 8. G.S. 45-36.9 reads as rewritten:

"**§ 45-36.9. Secured creditor to submit satisfaction or release for recording; liability for failure.**

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has

received (i) a notification requesting the creditor to terminate the line of ~~credit~~ credit, (ii) a credit suspension directive, or (iii) a notification containing ~~a~~ a clear and unambiguous statement sufficient to terminate the effectiveness of the provision for future advances in the security ~~instrument.~~ instrument including, but not limited to, a request to terminate an equity line of credit given pursuant to G.S. 45-82.2 or a notice regarding future advances given pursuant to G.S. 45-82.3.

(a1) If the conditions stated in a short-pay statement are fully satisfied on or before the short-pay date stated in the short-pay statement, including the payment in full of the short-pay amount and the satisfaction of all other conditions precedent to the release set forth in the short-pay statement, then within 30 days after the short-pay date the secured creditor shall release the property which is the subject of the short-pay statement from the lien of the security instrument. The release of the property may be accomplished by a deed of release, an instrument of full or partial reconveyance, a partial release recorded pursuant to G.S. 45-36.22, the satisfaction of record of the security instrument by any of the means authorized in G.S. 45-37(a), or by any other lawful means.

...."

SECTION 9. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-36.22. Partial release: content and effect; form.**

(a) A document is a partial release if it does all of the following:

(1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) States that the person signing the partial release is the secured creditor or, if the security instrument is a deed of trust, that the person or persons signing the partial release is or are the secured creditor, the trustee, or both the secured creditor and the trustee.

(3) Contains language releasing property or an interest in property from the lien of the security instrument.

(4) Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor or, if the security instrument is a deed of trust, by the secured creditor, the trustee, or both the secured creditor and the trustee.

(b) The register of deeds shall accept a partial release for recording unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The required recording fee is not paid.

(3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor or, if the security instrument is a deed of trust, by the secured creditor, the trustee, or both the secured creditor and the trustee. The register of deeds shall not be required to verify or make inquiry concerning the truth of the matters stated in any partial release or the authority of the person executing any partial release to do so.

(c) Upon recording, a partial release shall release from the lien of the security instrument the property or interest in property as is expressly described and released. With respect only to the specific property or interest in property identified and released by a partial release, the partial release shall (i) operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property or interest in the property; (ii) release

and discharge all of the secured creditor's interest in the property or property interest arising from the security instrument; and (iii) if the security instrument is a deed of trust, release and discharge all the interest of the trustee in the property or property interest arising from the deed of trust. The security instrument shall otherwise remain in full force and effect, and the remainder of the property and interests in property described in and encumbered by the security instrument shall remain subject to the lien of the security instrument.

(d) The recording of a partial release does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(e) The provisions of this section are not exclusive. Property and interests in property may be released from the lien of a security instrument by methods other than the filing of a partial release.

(f) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a necessary party to a partial release.

(g) No particular phrasing is required for a partial release. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.22(a):

"PARTIAL RELEASE
(G.S. 45-36.22)

The security instrument that is the subject of this Partial Release is identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

The person or persons signing this Partial Release is/are: (check appropriate box)

[ ] The secured creditor.

[ ] The trustee or substitute trustee.

[ ] The secured creditor and the trustee or substitute trustee.

The following described property or interest in property (and no other) is released from the lien of the security instrument: (identify legal description of property or interest in property to be released)

Date: _____ _____
Signature(s) of secured creditor and/or trustee

[Acknowledgment before officer authorized to take acknowledgments]"."

SECTION 10. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-36.23. Obligation release: content and effect.**

(a) A document is an obligation release if it does all of the following:

(1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

(2) States that the person signing the obligation release is the owner and holder of the obligation or obligations to be released.

(3) Identifies one or more of the specific obligations that are secured by the security instrument and contains language confirming that, with respect to

each such secured obligation, the obligation is no longer secured by the security instrument.

(4) Is signed and acknowledged as required by law for a conveyance of an interest in real property by the owner and holder of the specific obligation or obligations to be released.

(b) The register of deeds shall accept an obligation release for recording unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The required recording fee is not paid.

(3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property by the owner and holder of the obligation or obligations to be released. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any obligation release or (ii) the authority of the person executing any obligation release to do so.

(c) From and after the date an obligation release is recorded, the obligation or obligations specifically identified and released in the obligation release (and only such obligation or obligations) shall no longer be secured by the security instrument, without regard to whether the obligation has been paid in full and satisfied. Unless the obligation release states that the secured obligation has been paid in full and satisfied, the recording of an obligation release does not by itself extinguish any liability of a person for payment or performance of the obligation or obligations released.

(d) Secured obligations that are not specifically identified and released in an obligation release remain secured by the security instrument, and the recording of an obligation release does not extinguish any liability of a person for payment or performance of the remaining secured obligation or obligations. The recording of an obligation release has no effect on the lien of the security instrument on the real property described in the security instrument.

(e) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a necessary party to an obligation release.

(f) No particular phrasing is required for an obligation release. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.23(a):

"OBLIGATION RELEASE
(G.S. 45-36.23)

The undersigned is now the owner and holder of the obligation(s) to be released by this instrument. As used in this release, the term "Security Instrument" refers to the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

Secured obligations that are no longer secured. Each of the following obligations is no longer secured by the Security Instrument, without regard to whether the obligation has been paid in full and satisfied: (identify with particularity each secured obligation that will no longer be secured by the Security Instrument)

(Optional provision which may be used in addition to or in lieu of the paragraph above:) Secured obligations that have been paid in full and satisfied. Each of the following obligations has been paid in full and satisfied and is consequently no longer secured by the Security Instrument: (identify with particularity each secured obligation that has been paid in full and satisfied and is consequently no longer secured by the Security Instrument)

Date: _____ _____

Signature of owner and holder of the obligation(s) to be released

[Acknowledgment before officer authorized to take acknowledgments]"."

SECTION 11. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-36.24. Expiration of lien of security instrument.**

(a) Maturity Date. – For purposes of this section:

(1) If a secured obligation is for the payment of money:

a. If all remaining sums owing on the secured obligation are due and payable in full on a date specified in the secured obligation, the maturity date of the secured obligation is the date so specified. If no such date is specified in the secured obligation, the maturity date of the secured obligation is the last date a payment on the secured obligation is due and payable under the terms of the secured obligation.

b. If all remaining sums owing on the secured obligation are due and payable in full on demand or on a date specified in the secured obligation, whichever first occurs, the maturity date of the secured obligation is the date so specified. If all sums owing on the secured obligation are due and payable in full on demand and no alternative date is specified in the secured obligation for payment in full, the maturity date of the secured obligation is the date of the secured obligation.

c. The maturity date of the secured obligation is "stated" in a security instrument if (i) the maturity date of the secured obligation is specified as a date certain in the security instrument, (ii) the last date a payment on the secured obligation is due and payable under the terms of the secured obligation is specified in the security instrument, or (iii) the maturity date of the secured obligation or the last date a payment on the secured obligation is due and payable under the terms of the secured obligation can be ascertained or determined from information contained in the security instrument, such as, for example, from a payment schedule contained in the security instrument.

(2) If the secured obligation is for the performance of some obligation other than the payment of money:

a. If the secured obligation is required to be performed by a date specified in the secured obligation, the maturity date of the secured obligation is the date so specified.

b. If the obligation is to be performed on demand or before a date specified in the secured obligation, whichever first occurs, the maturity date of the secured obligation is the date so specified. If the obligation is to be performed on demand and no alternative date for

performance is specified in the secured obligation, the maturity date of the secured obligation is the date of the secured obligation.

c. The maturity date of the secured obligation is "stated" in a security instrument if (i) the maturity date of the secured obligation is specified as a date certain in the security instrument or (ii) the maturity date of the secured obligation can be ascertained or determined from information contained in the security instrument.

(b) Automatic Lien Expiration. – Except as provided in subsection (g) of this section, unless the lien of a security instrument has been extended in the manner prescribed in subsection (c), (d), or (e) of this section, the security instrument has been foreclosed, or the security instrument has been satisfied of record pursuant to G.S. 45-37, the lien of a security instrument automatically expires, and the security instrument is conclusively deemed satisfied of record pursuant to G.S. 45-37, at the earliest of the following times:

(1) If the security instrument was first recorded before October 1, 2011:

a. If the maturity date of the secured obligation is stated in the security instrument, 15 years after the maturity date.

b. If the maturity date is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of deeds or acknowledged as required by law for a conveyance of an interest in real property, whichever is later.

c. Without regard to whether the maturity date of the secured obligation is stated in the security instrument, 15 years from whichever of the following occurs last:

1. The date when the conditions of the security instrument were required by its terms to have been performed.

2. The date of maturity of the last installment of debt or interest secured thereby.

3. The date an affidavit or separate instrument was recorded pursuant to the provisions of G.S. 45-37(b), if any such affidavit or separate instrument was recorded before October 1, 2011, and before the lien of the security instrument expired.

(2) If the security instrument was first recorded on or after October 1, 2011:

a. If the maturity date of the secured obligation is stated in the security instrument, 15 years after the maturity date.

b. If the maturity date of the secured obligation is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of deeds or October 1, 2011, whichever is later.

(c) Methods To Extend a Lien. – The lien of a recorded security instrument may be extended one or more times by recording (i) a lien maturity extension agreement or (ii) a notice of maturity date. If more than one lien maturity extension agreement or notice of maturity date is recorded, the most recently recorded lien maturity extension agreement or notice of maturity date controls in determining when the lien of a security instrument expires. A lien maturity extension agreement or notice of maturity date is ineffective unless recorded before the lien expires. The lien of the original security instrument may not be extended to a date more than 50 years after the date the security instrument was originally recorded in the office of the register of deeds without the written agreement of the then owner of the property encumbered by the lien of the security instrument.

(d) Lien Maturity Extension Agreement. –

(1) The lien of a recorded security instrument may be extended to a date specified in a lien maturity extension agreement, provided the lien maturity extension agreement is recorded before the lien expires. When a lien maturity extension agreement has been duly recorded, the lien of the security instrument will expire on the date specified in the lien maturity extension agreement.

(2) A document (including any document that modifies, amends, or restates a security instrument) is a lien maturity extension agreement if it does all of the following:

a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

b. States the date to which the lien of the security instrument is extended.

c. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor and the then owner of the property encumbered by the lien of the security instrument.

(3) No particular phrasing is required for a lien maturity extension agreement. The following form, when properly completed, is sufficient to satisfy the requirements for a lien maturity extension agreement:

"LIEN MATURITY EXTENSION AGREEMENT
(G.S. 45-36.24(d))

_____ is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

_____ is now the owner of the real property encumbered by the lien of the security instrument.

Pursuant to G.S. 45-36.24(d), the lien of the security instrument is extended to and including _____ (specify date).

Date: _____

_____ _____
Signature of Current Owner of Real Property Signature of Secured Creditor

[Acknowledgments before officer authorized to take acknowledgments]"

(e) Notice of Maturity Date. –

(1) The lien of a recorded security instrument may be extended by a notice of maturity date, provided the notice of maturity date is recorded before the lien expires.

(2) When a notice of maturity date signed only by the secured creditor has been duly recorded, the lien of the security instrument will expire at the earliest of the following times: (i) 15 years after the maturity of the secured obligation

as stated in the notice of maturity date or (ii) 50 years after the date the security instrument was originally recorded in the office of the register of deeds. A document signed only by the secured creditor is a notice of maturity date if it does all of the following:

a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

b. States that the person signing the notice of maturity date is the secured creditor.

c. States the maturity date of the secured obligation.

d. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor.

(3) When a notice of maturity date signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument has been duly recorded, the lien of the security instrument will expire 15 years after the maturity date of the secured obligation as stated in the notice of maturity. A document (including any document that modifies, amends, or restates a security instrument) signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument is a notice of maturity date if it:

a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.

b. States the maturity date of the secured obligation.

c. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor and the then owner of the property encumbered by the lien of the security instrument.

(4) No particular phrasing is required for a notice of maturity date. The following form, when properly completed, is sufficient to satisfy the requirements for a notice of maturity date signed only by the secured creditor:

"NOTICE OF MATURITY DATE
(G.S. 45-36.24(e))

The undersigned is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

The maturity date of the secured obligation is _____ (specify date).

Date: _____

_____
Signature(s) of secured creditor

[Acknowledgment before officer authorized to take acknowledgments]"

(f) Exception. – The register of deeds shall accept a lien maturity extension agreement or a notice of maturity date for recording and index the document as a subsequent instrument in accordance with G.S. 161-14.1, unless one of the following applies:

(1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.

(2) The required recording fee is not paid.

(3) The document is not signed and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in the document, (ii) whether the parties to the document are in fact the secured creditor and the then owner of the real property encumbered by the lien of the security instrument, or (iii) the authority of any person executing the document to do so.

(g) Foreclosure Proceedings. – No proceeding may be commenced to foreclose the lien of a security instrument unless the proceeding is commenced prior to the date on which the lien of the security instrument expires. However, if a proceeding to foreclose the lien of a security instrument is commenced before the lien of the security instrument expires, the lien created by the security instrument shall continue until final disposition of the proceeding. This provision shall not be construed as extending the lien or the right to bring or maintain any action for which a shorter period may be provided by law.

(h) No Shortening of Lien Without Secured Creditor's Consent. – Subject to the provisions of G.S. 45-37, the duration of the lien of a security instrument may not be shortened without the consent of the secured creditor.

(i) No Release or Satisfaction Necessary. – No release, satisfaction, or other instrument is necessary to discharge the lien of a security instrument that has expired; however, nothing in this section shall be construed as affecting or preventing the execution and recordation of any such release, satisfaction, or other document.

(j) Trustee in a Deed of Trust. – For purposes of this section, the trustee or substitute trustee in a deed of trust (i) shall not be considered the owner of the property encumbered by the lien of the deed of trust and (ii) shall not be a necessary party to a lien maturity extension agreement or notice of maturity date.

(k) Applicability. – This section applies to all security instruments, whether recorded before, on, or after October 1, 2011, except the following:

(1) Any security instrument securing the payment of money or securing the performance of any other obligation or obligations conclusively presumed to have been fully paid and performed pursuant to the provisions of G.S. 45-37(b) prior to October 1, 2011.

(2) Any security instrument made or given by any railroad company, or any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage, or other instrument relating to the sale, purchase, or lease of railroad equipment or rolling stock, or of other personal property."

SECTION 12. G.S. 45-37(b) reads as rewritten:

"**§ 45-37. Satisfaction of record of security instruments.**

...

(b) It shall be conclusively presumed that the conditions of any security instrument recorded before October 1, 2011, securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

(1) The date when the conditions of the security instrument were required by its terms to have been performed, or

(2) The date of maturity of the last installment of debt or interest secured thereby;

provided that on or before October 1, 2011, and before the lien has expired pursuant to this subsection, the holder of the indebtedness secured by the security instrument or party secured by any provision thereof may file an affidavit with the register of deeds which affidavit shall specifically state:

(1) The amount of debt unpaid, which is secured by the security instrument; or

(2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument signed by the secured creditor and witnessed by the register of deeds stating:

(1) Any payments that have been made on the indebtedness or other obligation secured by the security instrument including the date and amount of payments and

(2) The amount still due or obligations not performed under the security instrument.

The effect of the filing of the affidavit or the recording of a separate instrument made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the separate instrument. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record and index the affidavit provided for herein or the separate instrument made as herein provided as a subsequent instrument in accordance with G.S. 161-14.1. This subsection shall not apply to any security instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

The lien of any security instrument that secured the payment of money or the performance of any other obligation or obligations and that was conclusively presumed to have been fully paid and performed prior to October 1, 2011, pursuant to the provisions of this subsection is conclusively deemed to have expired and shall be of no further force or effect. No release, satisfaction, or other instrument is necessary to discharge the lien of a security instrument that has expired; however, nothing in this section shall be construed as affecting or preventing the execution and recordation of any such release, satisfaction, or other document.

This subsection shall apply only to security instruments securing the payment of money or securing the performance of any other obligation or obligations that were conclusively presumed pursuant to this subsection to have been fully paid and performed prior to October 1, 2011. All other security instruments shall be subject to the provisions of G.S. 45-36.24."

SECTION 13. G.S. 45-37.2 reads as rewritten:

"**§ 45-37.2. Recording satisfactions ~~of~~ and other documents relating to security instruments.**

(a) ~~When a satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to G.S. 45-37(a)(7), the~~The register of deeds shall record and index the ~~instrument~~ following instruments in accordance with ~~G.S. 161-14.1.~~G.S. 161-14.1:

(1) A substitution of trustee.

(2) A document of rescission recorded pursuant to G.S. 45-36.6.

(3) A deed of release or reconveyance.

(4) A partial release recorded pursuant to G.S. 45-36.22.

(5) An obligation release recorded pursuant to G.S. 45-36.23.

(6) A satisfaction document, affidavit of satisfaction, or trustee's satisfaction recorded pursuant to G.S. 45-37(a)(7).

(7) A lien maturity extension agreement or notice of maturity date recorded pursuant to G.S. 45-36.24.

No fee shall be charged by the register of deeds for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

(b) When a security instrument is satisfied of record by a method other than by means of recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with ~~G.S. 161.14.1~~G.S. 161-14.1 a record of satisfaction as provided for in this subsection. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of the original security instrument rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection. In all other cases, the record of satisfaction shall consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording a record of satisfaction.

...."

SECTION 14. Article 4 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-42.3. Automatic release of real property from ancillary security instruments.**

(a) The following definitions shall apply in this section:

(1) Ancillary security instrument. – An assignment of leases with respect to the real property, an assignment of rents from or arising out of the real property, a financing statement covering fixtures on the real property that is filed in the office of the register of deeds in the county in which the real property is located, and any other document or instrument that assigns, or creates a lien on, an interest in the real property.

(2) Real property. – The real property described in and encumbered by the lien of a security instrument.

(b) Except as provided in subsection (c) of this section, (i) the expiration of the lien of a security instrument pursuant to G.S. 45-36.24 or the satisfaction of a security instrument of record pursuant to G.S. 45-37 shall be deemed automatically to release the real property from the operation of all ancillary security instruments that secure the same obligation or obligations secured by the security instrument and (ii) the recording of a partial release pursuant to G.S. 45-36.22 or the recording of a deed of release shall be deemed automatically to release the real property described in the partial release or deed of release from the operation of all ancillary security instruments that secure the same obligation or obligations secured by the security instrument.

(c) Subsection (b) of this section shall not apply to an ancillary security instrument if (i) the ancillary security instrument secures obligations other than, or in addition to, the obligation or obligations secured by the security instrument; (ii) the security instrument, the ancillary security instrument, or the document recorded in the office of the register of deeds to satisfy the security instrument of record expressly states that the satisfaction of the security instrument of record shall not release the real property from the operation of that particular ancillary security instrument or from ancillary security instruments in general; or (iii) the security instrument, the ancillary security instrument, the partial release, or the deed of release expressly states that the partial release or deed of release shall not release real property from the operation of that particular ancillary security instrument or ancillary security instruments in general."

SECTION 15. Article 5 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"§ 45-45.3. Trustee in a deed of trust.

(a) The following definitions apply in this section:

(1) Secured creditor. – The holder, owner, or assignee of the obligation secured by a deed of trust.

(2) Trustee. – The trustee or substitute trustee then serving as such under the terms of a deed of trust.

(b) Unless the deed of trust provides otherwise, all of the following may be done without the knowledge, consent, or joinder of the trustee:

(1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and holder of the obligation to be no longer secured by the deed of trust.

(2) Property may be released from the lien of a deed of trust by the secured creditor.

(3) The lien of a deed of trust may be released or subordinated by the secured creditor.

(4) The terms of a deed of trust may be modified by the secured creditor and the then record owner of the property encumbered by the lien of the deed of trust.

(5) The deed of trust may be satisfied of record by the secured creditor.

(c) Except in matters relating to the foreclosure of the deed of trust or the exercise of a power of sale under the terms of the deed of trust, the trustee is neither a necessary nor a proper party to any civil action or proceeding involving (i) title to the real property encumbered by the lien of the deed of trust or (ii) the priority of the lien of the deed of trust. Examples of civil actions or proceedings in which the trustee is neither a necessary nor a proper party include, but are not limited to, civil actions or proceedings relating to:

(1) Condemnation.

(2) Bankruptcy.

(3) The establishment or correction of title to real property, including, but not limited to, actions to quiet title, reform land records, or resolve boundary line disputes.

(4) Fraudulent conveyances.

(5) The creation or enforcement of an attachment or judgment lien.

(6) The foreclosure of a lien other than the lien of the deed of trust, regardless of whether the lien is superior or subordinate to the lien of the deed of trust, including, but not limited to, the foreclosure of mortgages, other deeds of trust, tax liens, and assessment liens.

(7) The establishment, perfection, or enforcement of a mechanic's or materialman's lien.

(8) The creation or enforcement of a constructive trust, resulting trust, or equitable lien relating to the property.

(9) The partition of real property.

(10) The interpretation or enforceability of a will, trust, or estate.

(11) A subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust.

(12) Determination or enforcement of rights and obligations involving easements or restrictive covenants.

(d) If a trustee is improperly joined as a party to an action or proceeding when this section provides that the trustee is neither a necessary nor a proper party to that action or proceeding, then:

(1) Upon motion duly made by any party to the action or proceeding, the trustee shall be dismissed from the action or proceeding;

(2) Regardless of whether the trustee makes an appearance in the action or proceeding, no entry of a default or default judgment shall be entered against the trustee; and

(3) If the trustee makes an appearance in the action or proceeding, each person who improperly joined the trustee as a party to the action or proceeding shall be jointly and severally liable to the trustee for all the expenses and costs incurred by the trustee in the defense of the action or proceeding or in obtaining the trustee's dismissal from the action or proceeding, including the reasonable attorneys' fees actually incurred by the trustee.

(e) Except as expressly provided in this section, this section is not in derogation of case law and statutory provisions that vest legal title to property conveyed by a deed of trust in the trustee named therein."

SECTION 16. G.S. 45-68 reads as rewritten:

"**§ 45-68. Requirements.**

A security instrument, otherwise valid, shall secure the following so as to give priority as provided in G.S. 45-70:

(a) Existing obligations that are specifically or generally ~~identified~~ identified, described, or referenced in the security instrument as being secured thereby, and all advances made at or prior to the registration of the security instrument.

(b) Future advances and future obligations that are specifically or generally identified, described, or referenced in the security instrument as being secured thereby that may from time to time be made or ~~incurred under the security instrument,~~ incurred, but only if the security instrument shows all of the following:

a. That the security instrument is given wholly or partly to secure future advances and/or future ~~obligations that may be made or incurred under the security instrument.~~ obligations.

SECTION 17. G.S. 45-69 reads as rewritten:

"**§ 45-69. Extension of obligations within maximum amount.**

Unless the security instrument provides to the contrary, if the maximum amount secured by the security instrument has not been advanced or if any obligation secured thereby is paid or is reduced by partial payment, further advances may be made and additional obligations secured by the security instrument may be incurred from time to time within the time limit fixed by the security instrument. Such further advances and ~~obligations~~ obligations, together with interest thereon, shall be secured to the same extent as original advances and obligations under the security instrument, if the provisions of G.S. 45-68 are complied with. ~~However, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by the security instrument exceeds the maximum principal amount that may be secured by the security instrument at any one time, then the excess shall not be secured by the security instrument.~~"

SECTION 18. G.S. 45-70 reads as rewritten:

"**§ 45-70. Priority of security instrument.**

(a) ~~Any~~ Subject to subsections (a1), (c), and (d) of this section, any security instrument that conforms to the requirements of this Article shall, from the time and date of registration thereof, have the same priority to the extent of all future advances and future obligations secured by it, and all interest accruing thereon, as if all the advances had been ~~made and~~ made, all the obligations ~~incurred~~ incurred, and all the interest accrued at the time the security instrument was registered.

(a1) Subject to subsections (c) and (d) of this section, if at any time the aggregate outstanding principal balance of the obligation or obligations secured by a security instrument that conforms to the requirements of this Article exceeds the maximum principal amount that may be secured by the security instrument at any one time, then, unless the security instrument provides otherwise, the amount in excess and the interest accrued on the amount in excess shall be secured by the security instrument, but (i) the amount in excess and the interest accrued on the amount in excess shall not be afforded the priority provided in subsection (a) of this section and (ii) the priority of the lien of the security instrument with respect to the amount in excess and the interest accrued on the amount in excess shall be determined by other applicable law.

(b) Repealed by Session Laws 1989, c. 496, s. 3.

(c) ~~Payments made by the secured creditor for fire and extended coverage insurance, taxes, assessments, or other necessary expenditures for the preservation of the security~~ All payments made, sums advanced, and expenses incurred by the secured creditor (i) for insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the security instrument, or (iii) to preserve and protect the value or condition of the real property encumbered by the security instrument, shall be secured by the security instrument and shall have the same priority as if ~~such payments had been made~~ they had been paid, advanced, or incurred at the time the security instrument was registered. The provisions of G.S. 45-68 shall not be applicable to such payments, advances, or expenses, nor shall accrued interest or such ~~payments~~ payments, advances, or ~~accrued interest~~ expenses be considered in computing the ~~maximum~~ principal amount ~~which may be~~ that is secured by the security ~~instrument.~~instrument at any one time.

(d) Notwithstanding any other provision of this Article, any security instrument hereafter executed which secures an obligation or obligations of an electric or telephone membership corporation incorporated or domesticated in North Carolina to the United States of America or any of its agencies, or to any other financing institution, or of an electric or gas utility operating in North Carolina, shall from the time and date of registration of said security instrument have the same priority to the extent of (i) all future obligations incurred by the membership corporation or utility to any mortgagee or beneficiary named in the security instrument, together with interest thereon, (ii) all future advances secured by ~~it~~ it, together with interest thereon, and (iii) all payments made, sums advanced, and expenses incurred by the secured creditor of the types described in subsection (c) of this section, as if ~~all the advances had been made~~ they all had been accrued, paid, made, advanced, and incurred at the time of the ~~execution~~ registration of the security instrument, regardless of whether ~~the making of such advances is obligatory or whether~~ the security instrument meets the requirements of G.S. 45-68."

SECTION 19. G.S. 45-74 reads as rewritten:

"**§ 45-74. Article not exclusive.**

The provisions of this Article shall not be deemed ~~exclusive, and no security instrument securing future advances or future obligations which is otherwise valid shall be invalidated by failure to comply with the provisions of this Article.~~exclusive. Nothing in this Article shall invalidate or overrule any rule of validity or priority applicable to any security instrument failing to comply with the provisions of this Article."

SECTION 20. G.S. 45-81 reads as rewritten:

"**§ 45-81. ~~Definition.~~Definitions.**

~~(a) The term "equity line of credit" means an agreement in writing between a lender and a borrower for an extension of credit pursuant to which:~~

~~(1) At any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide, by honoring negotiable~~

~~instruments drawn by the borrower or otherwise, advances up to an agreed aggregate limit;~~

~~(2) Any repayments of principal by the borrower within the specified period will reduce the amount of advances counted against the aggregate limit; and~~

~~(3) The borrower's obligation to the lender is secured by a mortgage or deed of trust relating to real property which mortgage or deed of trust shows on its face the maximum principal amount which may be secured at any one time and that it secures an equity line of credit governed by the provisions of this Article.~~

~~(b) As used in subdivision (a)(1) of this section, "lender is obligated" means that the lender is contractually bound to provide advances. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the lender from his obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.~~

~~(c) At any time when the balance of all outstanding sums secured by a mortgage or deed of trust pursuant to the provisions of this Article is zero, the lender shall, upon the request of the borrower, make written entry upon the security instrument showing payment and satisfaction of the instrument; provided, however, that such security instrument shall remain in full force and effect for the term set forth therein absent the borrower's request for such written entry. No prepayment penalty may be charged with respect to an equity line of credit loan.~~

The following definitions apply in this Article:

(1) Authorized person. – Any borrower; the legal representative of any borrower; the attorney for any borrower; a title insurance company authorized pursuant to Article 26 of Chapter 58 of the General Statutes to issue title insurance policies in the State of North Carolina, but only when the company is acting in connection with a title insurance policy issued or to be issued with respect to property then encumbered by an existing equity line security instrument; or an attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is or was responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, property then encumbered by an existing equity line security instrument and (ii) a requirement of the sale or new loan transaction is or was that the property be conveyed or encumbered free and clear of the lien of the existing equity line security instrument.

(2) Borrower. – A person primarily liable for payment or performance of an equity line of credit.

(3) Equity line of credit. – An agreement in writing between a lender and a borrower for an extension of credit pursuant to which (i) at any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide advances up to an agreed aggregate limit; (ii) any repayments of principal by the borrower within the specified period will reduce the amount of advances counted against the aggregate limit; and (iii) the borrower's obligation to the lender is secured by an equity line security instrument.

(4) Equity line security instrument. – An agreement, however denominated, that (i) creates or provides for an interest in real property to secure payment or performance of an equity line of credit, whether or not it also creates or provides for a lien on personal property; (ii) shows on its face the maximum

principal amount which may be secured at any one time; and (iii) shows on its face that it secures an equity line of credit governed by the provisions of this Article. The term "equity line security instrument" includes a deed of trust and a mortgage.

(5) Lender is obligated. – The lender is contractually bound to provide advances. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the lender from his obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.

(6) Notice regarding future advances. – A written notice submitted under G.S. 45-82.3 to a lender that prevents certain advances made pursuant to an equity line of credit from being secured by the related equity line security instrument.

(7) Owner. – Any person owning a present or future interest in the real property encumbered by an equity line security instrument, but does not mean the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, judgment lien, or any other lien on, or security interest in, the real property.

(8) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) Qualified lien holder. – A person who has a mortgage or deed of trust on property already encumbered by an existing equity line security instrument, where that person's mortgage or deed of trust was recorded after the existing equity line security instrument and it appears from warranties or otherwise that the person's mortgage or deed of trust was not intended to be subordinate to the existing equity line security instrument. The term does not include a trustee under a deed of trust.

(10) Request to terminate an equity line of credit; and termination request. – A written request submitted under G.S. 45-82.2 to a lender to terminate an equity line of credit. Each of the following shall be deemed a termination request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the lender to terminate the equity line of credit, (ii) a notification given pursuant to G.S. 45-36.9(a) containing a statement sufficient to terminate the effectiveness of the provision for future advances in the equity line security instrument, and (iii) a written request made by or on behalf of a borrower to a lender pursuant to G.S. 45-37 to satisfy a related equity line security instrument as a matter of public record."

SECTION 21. G.S. 45-82 reads as rewritten:

"**§ 45-82. Priority of equity line security instrument.**

~~A mortgage or deed of trust which~~ An equity line security instrument ~~shows on its face that it secures an equity line of credit governed by the provisions of this Article,~~ shall, from the time and date of its registration, have the same priority to the extent of all advances secured by it as if the advances had been made at the time of the ~~execution~~ registration of the equity line ~~mortgage or deed of trust,~~ security instrument, notwithstanding the fact that from time to time during the term of the ~~loan~~ equity line of credit no balance is outstanding. ~~Payments made by the lender for insurance, taxes, and assessments and other payments made by the lender pursuant to the deed of trust shall have the same priority as if made at the time of the execution of the mortgage or deed of trust, notwithstanding the maximum principal amount set forth in~~

~~the mortgage or deed of trust.~~Interest that accrues on the equity line of credit and all payments made, sums advanced, and expenses incurred by the lender (i) for insurance, taxes, and assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii) to preserve and protect the value or condition of the property encumbered by the equity line security instrument, shall be secured by the equity line security instrument and shall have the same priority as if they had been accrued, paid, advanced, and incurred at the time the equity line security instrument was registered. The accrued interest, payments, advances, and expenses shall not be considered in computing the principal amount that is secured by the equity line security instrument at any one time."

SECTION 22. G.S. 45-82.1 reads as rewritten:

"**§ 45-82.1. Extension of period for advances.**

(a) The period for advances agreed to pursuant to ~~G.S. 45-81(a)(1)~~G.S. 45-81(3) may be extended by written agreement of the lender and borrower executed and registered prior to expiration or termination of the equity line of credit or the borrower's obligation to repay any outstanding indebtedness. Any extended period shall not exceed 30 years from the end of the preceding period for advances.

(b) If a lender and borrower extend the period for advances by registering a certificate as described in subsection (c) of this section, ~~A mortgage or deed of trust that secures an equity line of credit to which the lender and borrower have agreed to an extended period for advances shall have priority with respect to~~ advances that are made after the ~~preceding loan period~~ period for advances provided in the original recorded equity line security instrument or any previously recorded extension shall have priority from a date not later than the date of registration of the certificate described in subsection (c) of this section.

(c) The priority provided in subsection (b) of this section shall be accorded only if the ~~grantor of the mortgage or the deed of trust securing the obligation,~~lender, the borrower, and, if different than the borrower, the then owners of the real property encumbered by the equity line security instrument ~~and other record owners of the real property therein conveyed,~~ execute a certificate evidencing the extension and register the certificate in the office of the register of deeds where the equity line ~~mortgage or deed of trust~~ security instrument is registered. The failure of any ~~record~~ owner to execute the certificate shall affect only that ~~record~~ owner's interest in the property, and executions by other owners shall have full effect to the extent of their interests in the property. ~~For purposes of this section, the term "record owner" means any person owning a present or future interest of record in the real property which would be affected by the lien of the mortgage or deed of trust, but does not mean the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or any other lien or security interest in the real property.~~

(d) ~~The certificate described in subsection (c) of this section may be in any form that fulfills the requirements of subsection (c) of this section, including the following:~~No particular phrasing is required for a certificate of extension under this section. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (c) of this section:

~~"Certificate of Extension of Period for Advances Under Home Equity Line of Credit~~

~~Please take notice that the borrower and lender under the home equity line of credit secured by the (deed of trust) (mortgage) recorded on _____ in Book _____, at Page _____, records of this County, have agreed to extend the period within which the borrower may request advances as set forth in G.S. 45-82.1. The borrower's obligations to repay advances and related undertakings are secured by the (deed of trust) (mortgage).~~

~~WITNESS the signatures and seals of the undersigned, this _____ day of _____, _____.~~

~~(SEAL)~~
~~(Grantor (s))~~

~~(SEAL)~~
~~Other record owner(s)~~

~~(SEAL)~~
~~(Mortgagee or Beneficiary)~~

~~(Acknowledgment as required by law).~~"

"Certificate of Extension of Period for Advances Under Equity Line of Credit
(G.S. 45-82.1)

_____ is now the lender and secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)
Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))
Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)
Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

The borrower(s) is/are the following: _____.

The current owner(s) of the property described in the security instrument is/are: _____.

The parties have agreed to extend to _____ (insert date) the period within which the borrower may request advances as set forth in G.S. 45-82.1.

Date: _____

_____
Signature of secured creditor

_____
Signature of borrower(s)

_____
Signature of property owner(s) (if different)

[Acknowledgment before officer authorized to take acknowledgments]"."

SECTION 23. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-82.2. Request to terminate an equity line of credit.**

(a) Upon receipt of a request from an authorized person to terminate an equity line of credit, the lender shall (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related equity line security instrument; and (iii) when the balance of all outstanding sums secured by the related equity line security instrument becomes zero, satisfy the related equity line security instrument as a matter of public record pursuant to G.S. 45-37. A request to terminate an equity line of credit shall be conclusively deemed to have been submitted by or on behalf of a borrower if it is submitted by an authorized person.

(b) No particular phrasing is required for a request to terminate an equity line of credit. The following form, when properly completed, is sufficient to serve as a request to terminate an equity line of credit:

"REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT
(G.S. 45-82.2)

To: (name of lender)
This is a request to terminate an equity line of credit submitted pursuant to G.S. 45-82.2. For purposes of this request:

1. The borrower(s) is/are: (identify one or more of the borrowers)
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the request)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)
Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))
Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)
Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

I request and direct that you (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related security instrument; and (iii) when the balance of all outstanding sums secured by the related security instrument becomes zero, satisfy the security instrument identified above as a matter of public record pursuant to G.S. 45-37.

I certify that I am:

[] The borrower (or one of the borrowers, if there is more than one).
[] The legal representative of a borrower.
[] The attorney for a borrower.
[] A title insurance company that satisfies the requirements of G.S. 45-81(1).
[] An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. 45-81(1).
[] A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).

Date: _____ _____
Signature of person submitting the request"

(c) If the person who gives a lender a request to terminate an equity line of credit is a title insurance company described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).
We are a title insurance company that has issued or has agreed to issue a title insurance policy on that property. As permitted by North Carolina law, we are sending the

(enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is: (specify reason it is appropriate for the title insurance company to request the termination of the borrower's equity line of credit)

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we may send to your lender) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of title insurance company)"

(d) If the person who gives a lender a request to terminate an equity line of credit is an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)"."

SECTION 24. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-82.3. Notice regarding future advances.**

(a) A notice regarding future advances may be submitted to a lender by an authorized person, an owner of the property, or a qualified lien holder.

(b) Except as provided in subsection (c) of this section, an advance made by a lender to a borrower pursuant to an equity line of credit will not be secured by the related equity line security instrument if the advance occurs after the lender receives and has had not less than one complete business day to act on a notice regarding future advances.

(c) Notwithstanding a lender's receipt of a notice regarding future advances, the following shall be secured by the equity line security instrument and shall have the same priority as if they had been owing, accrued, paid, advanced, or incurred at the time the equity line security instrument was registered:

(1) Sums owing to the lender under the equity line of credit at the time the lender receives the notice regarding future advances (including accrued interest), all interest that thereafter accrues on the equity line of credit, and all payments made, sums advanced, and expenses incurred by the lender before or after the lender receives the notice regarding future advances (i) for insurance, taxes, and assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii) to preserve and protect the value or condition of the real property encumbered by the equity line security instrument.

(2) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs within one complete business day after the lender receives the notice regarding future advances.

(3) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs more than one complete business day after the lender receives the notice regarding future advances, but only if the advance was initiated or approved before the lender received the notice regarding future advances.

(d) Receipt by a lender of a notice regarding future advances shall be conclusively deemed to be an action by the borrower adversely affecting the lender's security for the equity line of credit. Upon receipt of a notice regarding future advances, the lender may terminate the borrower's right and ability to obtain additional advances under the equity line of credit.

(e) No particular phrasing is required for a notice regarding future advances. The following form, when properly completed, is sufficient to serve as a notice regarding future advances:

"NOTICE REGARDING FUTURE ADVANCES
(G.S. 45-82.3)

To: (name of lender)

This is a notice regarding future advances submitted pursuant to G.S. 45-82.3. For purposes of this notice:

1. The borrower(s) is/are: (identify borrower(s))
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the notice)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))
Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)
Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

Except as provided in G.S. 45-82.3(c), subsequent advances made by you under the equity line of credit will not be secured by the security instrument identified above.

I certify that I am:

[] The borrower (or one of the borrowers, if there is more than one).
[] The legal representative of a borrower.
[] The attorney for a borrower.
[] An owner of the property encumbered by the security instrument identified above.
[] A title insurance company that satisfies the requirements of G.S. 45-81(1).
[] An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. 45-81(1).
[] A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).
[] A qualified lien holder as defined in G.S. 45-81(9).

Date: _____ _____
Signature of person submitting the request"

(f) If the person who gives a lender a notice regarding future advances is (i) a title insurance company described in G.S. 45-81(1); (ii) an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), (iii) an owner as defined in G.S. 45-81(7), other than an owner who is also a borrower, or (iv) a qualified lien holder described in G.S. 45-81(9), then that person shall give a copy of the notice regarding future advances to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) Notice Regarding Future Advances to your lender. Subject to certain exceptions, the notice prevents any new credit advances you obtain under your equity line of credit from being secured by the mortgage or deed of trust that currently secures its repayment. Our reason for giving your lender the notice is to limit the amount secured by the mortgage or deed of trust that secures your equity line of credit and to prevent that amount from increasing.

When your lender receives our notice, your lender may elect to terminate your right and ability to obtain additional advances under your equity line of credit. However, termination of your right and ability to obtain additional advances will not release you from liability for the account. You should contact your lender to determine whether you will be able to obtain additional credit advances from your lender.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of insurance company, attorney, bank, savings and loan association, savings bank, credit union, owner, or qualified lien holder)"."

SECTION 25. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"**§ 45-82.4. Prepayment penalty.**

Except as provided in G.S. 24-9(c), no prepayment penalty may be charged with respect to an equity line of credit."

SECTION 26. G.S. 45-83 reads as rewritten:

"**§ 45-83. Future advances statute shall not apply.**

The provisions of Article 7 of this Chapter shall not apply to an equity line of credit or the equity line security instrument securing it, if the equity line security instrument shows on its face that it secures an equity line of credit governed by the provisions of this Article."

SECTION 27. G.S. 45-84 reads as rewritten:

"**§ 45-84. Article not exclusive.**

Except as otherwise provided in G.S. 45-83, the provisions of this Article are not ~~exclusive, and no mortgage or deed of trust which secures a line of credit or other obligation shall be invalidated by failure to comply with the provisions of this Article.~~exclusive. Nothing in this Article shall invalidate or overrule any rule of validity or priority applicable to any mortgage, deed of trust, or other security instrument failing to comply with the provisions of this Article."

SECTION 28. G.S. 161-14.1 reads as rewritten:

"**§ 161-14.1. Recording subsequent entries as separate instruments.**

(a) As used in this section, the following terms mean:

...

(3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the ~~appointment or designation of a substitute trustee in a deed of trust; an affidavit extending the life of a deed of trust; the cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered pursuant to G.S. 45-38; an assignment of a security instrument or lease; a modification agreement; a release or partial release of property from the lien of a security instrument; an assumption agreement; a subordination agreement; an instrument terminating future optional advances registered pursuant to G.S. 45-72; the revocation of a power of attorney; any instrument authorized or directed by law to be indexed under the provisions of this section; and any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.~~following:

a. The appointment or designation of a substitute trustee in a deed of trust.

b. A corrective affidavit registered pursuant to G.S. 45-36.1.

c. A lien maturity extension agreement or notice of maturity date registered pursuant to G.S. 45-36.1.

d. A document of rescission registered pursuant to G.S. 45-36.6.
e. The cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered pursuant to G.S. 130A-310.8(f).
f. A record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2.
g. A notice of foreclosure registered pursuant to G.S. 45-38.
h. An assignment of a security instrument or lease.
i. An amendment or modification agreement.
j. A release or partial release of property from the lien of a security instrument, including a partial release registered pursuant to G.S. 45-36.22 or a deed of release or reconveyance.
k. An obligation release registered pursuant to G.S. 45-36.23.
l. An assumption agreement.
m. A subordination agreement.
n. An instrument terminating future optional advances registered pursuant to G.S. 45-72.
o. A certificate of extension extending the period for advances under an equity line of credit registered pursuant to G.S. 45-82.1.
p. A notice of extension relating to after-acquired property registered pursuant to G.S. 47-20.5.
q. The revocation of a power of attorney.
r. Any instrument authorized or directed by law to be indexed under the provisions of this section.
s. Any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.

...."

SECTION 29. This act becomes effective October 1, 2011.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 3

SENATE BILL 679
Judiciary II Committee Substitute Adopted 6/7/11
Third Edition Engrossed 6/9/11

Short Title: Castle Doctrine/Amend Firearms Laws. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CASTLE DOCTRINE, TO ALLOW PERSONS WITH CONCEALED HANDGUN PERMITS TO CARRY A HANDGUN IN A PARK, TO AUTHORIZE THE PURCHASE OF RIFLES, SHOTGUNS AND AMMUNITION IN OTHER STATES, TO IMPOSE CRIMINAL PENALTIES FOR PROVIDING FALSE INFORMATION IN CONNECTION WITH FIREARM OR AMMUNITION TRANSFER, AND TO AUTHORIZE DISTRICT ATTORNEYS, ASSISTANT DISTRICT ATTORNEYS, OR THEIR INVESTIGATORS WHO HAVE A VALID CONCEALED HANDGUN PERMIT TO CARRY A CONCEALED WEAPON ON CERTAIN PREMISES OR IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 14 of the General Statutes is amended by adding the following new sections to read:

"**§ 14-51.2. Home, workplace, and motor vehicle protection; presumption of fear of death or serious bodily harm.**

(a) The following definitions apply in this section:

(1) Home. – A building or conveyance of any kind, to include its curtilage, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed as a temporary or permanent residence.

(2) Law enforcement officer. – Any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, probation officer, post-release supervision officer, or parole officer.

(3) Motor vehicle. – As defined in G.S. 20-4.01(23).

(4) Workplace. – A building or conveyance of any kind, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, which is being used for commercial purposes.

(b) The lawful occupant of a home, motor vehicle, or workplace is presumed to have held a reasonable fear of imminent death or serious bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or serious bodily harm to another if both of the following apply:

(1) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a home, motor vehicle, or workplace, or if that person had removed or was

attempting to remove another against that person's will from the home, motor vehicle, or workplace.

(2) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(c) The presumption set forth in subsection (b) of this section shall be rebuttable and does not apply in any of the following circumstances:

(1) The person against whom the defensive force is used has the right to be in or is a lawful resident of the home, motor vehicle, or workplace, such as an owner or lessee, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person.

(2) The person sought to be removed from the home, motor vehicle, or workplace is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the defensive force is used.

(3) The person who uses defensive force is engaged in, attempting to escape from, or using the home, motor vehicle, or workplace to further any criminal offense that involves the use or threat of physical force or violence against any individual.

(4) The person against whom the defensive force is used is a law enforcement officer who enters or attempts to enter a home, motor vehicle, or workplace in the lawful performance of his or her official duties, and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer in the lawful performance of his or her official duties.

(5) The person against whom the defensive force is used (i) has discontinued all efforts to unlawfully and forcefully enter the home, motor vehicle, or workplace and (ii) has exited the home, motor vehicle, or workplace.

(d) A person who unlawfully and by force enters or attempts to enter a person's home, motor vehicle, or workplace is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(e) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties.

(e1) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force, unless the person against whom force was used is a bail bondsman who was lawfully acting in the performance of his or her official duties and the bail bondsman identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a bail bondsman in the lawful performance of his or her official duties.

(f) A lawful occupant within his or her home, motor vehicle, or workplace does not have a duty to retreat from an intruder in the circumstances described in this section.

(g) This section is not intended to repeal or limit any other defense that may exist under the common law.

"**§ 14-51.3. Use of force in defense of person; relief from criminal or civil liability.**

(a) A person is justified in using force, except deadly force, against another when and to the extent that the person reasonably believes that the conduct is necessary to defend himself or herself or another against the other's imminent use of unlawful force. However, a person is justified in the use of deadly force and does not have a duty to retreat in any place he or she has the lawful right to be if either of the following applies:

(1) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another.

(2) Under the circumstances permitted pursuant to G.S. 14-51.2.

(b) A person who uses force as permitted by this section is justified in using such force and is immune from civil or criminal liability for the use of such force unless the person against whom force was used is a law enforcement officer who was lawfully acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer in the lawful performance of his or her official duties."

SECTION 2. G.S. 14-51.1 is repealed.

SECTION 3. G.S. 14-269 reads as rewritten:

"**§ 14-269. Carrying concealed weapons.**

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, or other deadly weapon of like kind, except when the person is on the person's own premises.

(a1) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

(1) The person is on the person's own premises.

(2) The deadly weapon is a handgun, ~~and~~ the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under ~~G.S. 14-415.24.~~G.S. 14-415.24, and the person is carrying the concealed handgun in accordance with the scope of the concealed handgun permit as set out in G.S. 14-415.11(c).

(3) The deadly weapon is a handgun and the person is a military permittee as defined under G.S. 14-415.10(2a) who provides to the law enforcement officer proof of deployment as required under G.S. 14-415.11(a).

(b) This prohibition shall not apply to the following persons:

(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;

(2) Civil and law enforcement officers of the United States;

(3) Officers and soldiers of the militia and the National Guard when called into actual service;

(4) Officers of the State, or of any county, city, town, or company police agency charged with the execution of the laws of the State, when acting in the discharge of their official duties;

(4a) Any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued in accordance with Article 54B of this Chapter or considered valid under G.S. 14-415.24; provided that the person shall not carry a concealed weapon at any time while in a courtroom or while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the person's body. The district attorney, assistant district attorney, or investigator shall secure the weapon in

a locked compartment when the weapon is not on the person of the district attorney, assistant district attorney, or investigator;

(5) Sworn law-enforcement officers, when off-duty, provided that an officer does not carry a concealed weapon while consuming alcohol or an unlawful controlled substance or while alcohol or an unlawful controlled substance remains in the officer's body.

(b1) It is a defense to a prosecution under this section that:

(1) The weapon was not a firearm;

(2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;

(3) The defendant possessed the weapon for that legitimate use; and

(4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(b2) It is a defense to a prosecution under this section that:

(1) The deadly weapon is a handgun;

(2) The defendant is a military permittee as defined under G.S. 14-415.10(2a); and

(3) The defendant provides to the court proof of deployment as defined under G.S. 14-415.10(3a).

(c) Any person violating the provisions of subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class I felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, "ordinary pocket knife" means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action."

SECTION 4. G.S. 14-409.10 reads as rewritten:

"**§ 14-409.10. Purchase of rifles and shotguns out of State.**

~~It shall be lawful for citizens of this State to purchase rifles and shotguns and ammunition therefor in states contiguous to this State.~~ Unless otherwise prohibited by law, a citizen of this State may purchase a firearm in another state if the citizen undergoes a background check that satisfies the law of the state of purchase and that includes an inquiry of the National Instant Background Check System."

SECTION 5. Article 53A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-408.1. Solicit unlawful purchase of firearm; unlawful to provide materially false information regarding legality of firearm or ammunition transfer.**

(a) The following definitions apply in this section:

(1) Ammunition. – Any cartridge, shell, or projectile designed for use in a firearm.

(2) Firearm. – A handgun, shotgun, or rifle which expels a projectile by action of an explosion.

(3) Handgun. – A pistol, revolver, or other gun that has a short stock and is designed to be held and fired by the use of a single hand.

(4) Licensed dealer. – A person who is licensed pursuant to 18 U.S.C. § 923 to engage in the business of dealing in firearms.

(5) Materially false information. – Information that portrays an illegal transaction as legal or a legal transaction as illegal.

(6) Private seller. – A person who sells or offers for sale any firearm, as defined in G.S. 14-409.39, or ammunition.

(b) Any person who knowingly solicits, persuades, encourages, or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances that the person knows would violate the laws of this State or the United States is guilty of a Class F felony.

(c) Any person who provides to a licensed dealer or private seller of firearms or ammunition information that the person knows to be materially false information with the intent to deceive the dealer or seller about the legality of a transfer of a firearm or ammunition is guilty of a Class F felony.

(d) Any person who willfully procures another to engage in conduct prohibited by this section shall be held accountable as a principal.

(e) This section does not apply to a law enforcement officer acting in his or her official capacity or to a person acting at the direction of the law enforcement officer."

SECTION 6. G.S. 14-415.11 reads as rewritten:

"**§ 14-415.11. Permit to carry concealed handgun; scope of permit.**

(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer. In addition to these requirements, a military permittee whose permit has expired during deployment may carry a concealed handgun during the 90 days following the end of deployment and before the permit is renewed provided the permittee also displays proof of deployment to any law enforcement officer.

(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of five years from the date of issuance.

(c) ~~A~~ Except as provided in G.S. 14-415.27, a permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in an area prohibited by rule adopted under G.S. 120-32.1, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or on any other premises, except state-owned rest areas or state-owned rest stops along the highways, where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises.

(c1) Any person who has a concealed handgun permit may carry a concealed handgun on the grounds or waters of a park within the State Parks System as defined in G.S. 113-44.9.

(c2) It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts.

(d) A person who is issued a permit shall notify the sheriff who issued the permit of any change in the person's permanent address within 30 days after the change of address. If a permit is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who issued the permit of the loss or destruction of the permit. A person may obtain a duplicate

permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed and paying the required duplicate permit fee."

SECTION 7. G.S. 14-415.23 reads as rewritten:

"**§ 14-415.23. Statewide uniformity.**

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government ~~buildings, their appurtenant premises, and parks.~~buildings and their appurtenant premises. A unit of local government may adopt an ordinance to prohibit, by posting, the carrying of a concealed handgun on municipal and county recreational facilities that are specifically identified by the unit of local government. If a unit of local government adopts such an ordinance with regard to recreational facilities, then the concealed handgun permittee may, nevertheless, secure the handgun in a locked vehicle within the trunk, glove box, or other enclosed compartment or area within or on the motor vehicle. For purposes of this section, the term "recreational facilities" includes only the following: a playground, an athletic field, a swimming pool, and an athletic facility."

SECTION 8. Article 54B of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-415.27. Expanded permit scope for district attorneys, assistant district attorneys, and investigators employed by office of the district attorney.**

Notwithstanding G.S. 14-415.11(c), any person who is a district attorney, an assistant district attorney, or an investigator employed by the office of a district attorney and who has a concealed handgun permit issued pursuant to this Article or that is considered valid under G.S. 14-415.24 is not subject to the restrictions and prohibitions set out in G.S. 14-415.11(c) and may carry a concealed handgun in the areas listed in G.S. 14-415.11(c) unless otherwise prohibited by federal law."

SECTION 9. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE COMMITTEE ON HOUSE JUDICIARY SUBCOMMITTEE C

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
Rep. Tim Moore, Chair	Nancy Garriss	733-4838	1326	8
Rep. Rayne Brown	Lynn Taylor	715-0873	638	73
Rep. George Cleveland	Pamela Ahlin	715-6707	471A	30
Rep. Jimmy Dixon	Dan McPhail	715-3021	1002	67
Rep. Joe Hackney	Emily Reynolds	733-0057	612	69
Rep. Pricey Harrison	Sue Osborne	733-5771	1218	118
Rep. Verla Insko	Gina Insko	733-7208	603	70
Rep. Bert Jones	Brenda Olls	733-5779	306A1	100
Rep. Jonathan Jordan	Hope Chadwick	733-7727	418C	79
Rep. Annie Mobley	Veronica Green	733-4780	501	108
Rep. Jason Saine	Susan Beaupied	733-5782	1004	19
Rep. Jennifer Weiss	Cindy Douglas	715-3010	1109	103

NORTH CAROLINA GENERAL ASSEMBLY

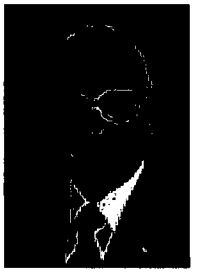
JUDICIARY SUB-COMMITTEE C: FAMILY LAW
2011-2012 SESSION



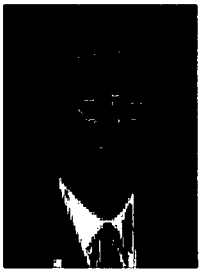
Rep. Tim Moore
Chair



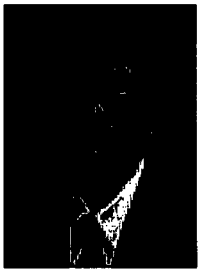
Rep. Rayne Brown



Rep. George Cleveland



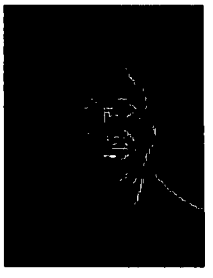
Rep. Jimmy Dixon



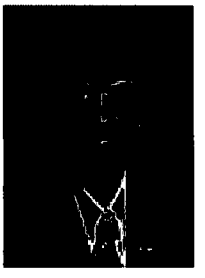
Rep. Joe Hackney



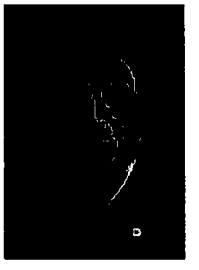
Rep. Pricey Harrison



Rep. Verla Insko



Rep. Bert Jones



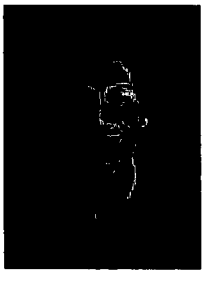
Rep. Jonathan Jordan



Rep. Annie Mobley



Rep. Jason Saine



Rep. Jennifer Weiss

ATTENDANCE

Judiciary Subcommittee C: Family Law

(Name of Committee)

DATES	05-30-2012	06-06-2012	06-06-2012	06-13-2012	06-14-2012	06-20-2012	06-27-2012								
Rep. Tim Moore, Chair	X	X	X	X	X	X	X								
Rep. Rayne Brown	X	X	X	X	X	X	X								
Rep. George Cleveland	X	X	X	X	X	X	X								
Rep. Jimmy Dixon		X	X	X	X		X								
Rep. Joe Hackney	X	X	X	X	X	X	X								
Rep. Pricey Harrison		X	X	X		X	X								
Rep. Verla Insko	X	X	X	X	X	X	X								
Rep. Bert Jones	X	X	X	X	X	X	X								
Rep. Jonathan Jordan	X	X	X	X	X	X	X								
Rep. Annie Mobley	X	X	X	X	X	X	X								
Rep. Jason Saine		X	X	X	X	X	X								
Rep. Jennifer Weiss	X	X	X	X	X	X	X								
Staff:															
Wendy Graf Ray	X	X	X	X	X	X	X								
Jan Paul	X	X	X	X	X	X	X								

Corrected Notice Cancelled Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Thursday, May 24, 2012
TIME: 9:00 am
LOCATION: 1425 LB
COMMENTS: Cancelled Meeting

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **May 23, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Corrected Notice –Note room change

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Thursday, May 24, 2012
TIME: 9:00 am
LOCATION: 1425 LB
COMMENTS: Room change

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **3 PM** o'clock on **May 23, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Thursday, May 24, 2012
TIME: 9:00 am
LOCATION: 1228 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **10 AM** o'clock on **May 23, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, May 30, 2012

The House Judiciary Subcommittee C (Family Law) met on Wednesday, May 30, 2012 in Room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Hackney, Insko, Jones, Jordan, Mobley, and Weiss.

Chair Moore presided and called the meeting to order at 10:05 a.m. The pages and sergeant-of-arms were recognized by Chair Moore.

The following bill was considered:

SB 133, Juror Privacy (Senators Clodfelter and Jones, Primary Sponsors). Chair Moore recognized Senator Clodfelter to explain the bill. Discussion and debate. Senator Clodfelter asked for the bill to be pulled from committee today to be worked on with staff. No vote was taken.

The meeting adjourned at 10:23 a.m.

Respectfully submitted,

Representative Tim Moore
Chair

Nancy Garriss
Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, May 30, 2012
Room 415 LOB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
SB 133	Juror Privacy.	Senator Clodfelter

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, May 30, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **1 PM** o'clock on **May 29, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

SENATE BILL 133

Short Title:	Juror Privacy.	(Public)
Sponsors:	Senators Clodfelter; and Jones.	
Referred to:	Judiciary I.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE ADDRESS OF EACH QUALIFIED PERSON SELECTED FOR THE JURY LIST APPEAR ON THE LIST FILED WITH THE REGISTER OF DEEDS, IN ORDER TO ALLAY JUROR PRIVACY CONCERNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name ~~and address~~ of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

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

SENATE BILL 133: Juror Privacy

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	May 29, 2012
Introduced by:	Sen. Clodfelter	**Prepared by:**	Janice Paul
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 133 would eliminate the requirement that the addresses of qualified persons be included on the jury list that is filed with the register of deeds.

CURRENT LAW: Each county's jury commission periodically prepares a list of prospective jurors qualified to serve, using the names of registered voters, persons with drivers license records, and names from other sources it deems reliable. The commission merges the entire list of names and randomly selects the requisite number of names to form the jury list. Counties may use electronic data processing equipment to prepare and maintain the jury lists. The procedure for these functions must be in writing, adopted by the jury commission, and kept available for public inspection in the clerk's office. G.S. 9-2.1 provides that the procedure must "effectively preserve...the right of public access to the list of prospective juror," and that "[a]ccess to the randomized list shall be prohibited." Public access to the jury list required by G.S. 9-4 is limited to the alphabetical listing of the names.

G.S. 9-4 provides that as the jury list is prepared, the *name and address* of each qualified person selected for the list must be kept on a separate card. The cards must be alphabetized, consecutively numbered, and filed with the county register of deeds and available for public inspection. These cards constitute the jury list for the county. The register of deeds may elect to store an electronic copy of the county's jury list.

BILL ANALYSIS: Senate Bill 133 would eliminate the requirement that the addresses of qualified persons be included on cards filed with the register of deeds.

EFFECTIVE DATE: This act is effective when it becomes law.

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

S133-SMTJ-64(e1) v1

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C: Family Law — May 30, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCAJ
Philip Fisher	NCAJ

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary C

DATE: 5.30.2012 Room: 415

*Name: Bre Capel

County: Buncombe

Sponsor: S. Fisher

*Name: Olivia Turner

County: Franklin

Sponsor: Thom Tillis

*Name: Andrew Pelletier

County: Washington

Sponsor: Tim Spear

*Name: Dess. Hair

County: Swain

Sponsor: Phil Haire

*Name:

County:

Sponsor:

House Sgt-At Arms:

Name: Carlton Adams

2. Name: Garland Shepard

3. Name:

4. Name:

5. Name:

6. Name:

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 6, 2012

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 6, 2012, at 10:05 a.m. in room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, Saine, and Weiss.

Rep. Tim Moore presided and called the meeting to order. Chair Moore said SB 26, North Carolina Benefit Corporation Act, was being pulled from the agenda.

The following bills were considered:

HB 1173, Absconding Prob. Violators Forfeit Benefits (Representatives LaRoque and Saine, Primary Sponsors). Chair Moore recognized Representative Saine to explain the bill. Chair Moore recognized Representative LaRoque also to speak on the bill. Discussion. From the public, Jane Simpson, DSS, was recognized to answer a question from Representative Insko. Representative Cleveland was recognized by Chair Moore for a motion for a favorable report and recommendation that the bill be re-referred to the Committee on Finance. With the majority being in favor, the motion carried.

SB 798, Various Emergency Management Changes (Senator Brunstetter, Primary Sponsor). Chair Moore recognized Senator Brunstetter to speak on the bill. Discussion. Chair Moore recognized Representative Jones for a motion for a favorable report. With the majority being in favor, the motion carried.

HB 1179, Indian Cultural Center/Terminate Lease (Representatives Graham, Pierce, Pridgen, and T. Moore, Primary Sponsors). Chair Moore recognized Representative Saine for a motion to place the Proposed Committee Substitute before the committee. Vote was called and motion passed. Representative Graham was recognized to explain the bill. Representative Graham had an attachment passed out to the committee members of pictures. (See attachment 1). Representative Cleveland presided while Representative T. Moore spoke on the bill. Discussion and debate. Representative Jones was recognized for motion for a favorable report to the Proposed Committee Substitute, which changes the title, unfavorable to the original bill. With the majority being in favor, the motion carried.

HB 1008, No Televisions on Death Row (Rules, Calendar, and Operations of the House, Primary Sponsor). Representative Cleveland presided and recognized Representative Moore to explain the bill. Discussion and debate. From the public, Kenneth Cassista, the Warden at Central Prison in Raleigh, was recognized to speak on the bill. Representative Jordan was recognized for a motion for a favorable report. With the majority being in favor, the motion carried.

HR 1191, Resolution of Disapproval of Reorganization (Representative Cleveland, Primary Sponsor). Chair Moore recognized Representative Cleveland to explain the bill. Representative Jordan presided and recognized Gerry Cohen, staff, to further explain the bill. Discussion and debate. Chair Moore displaced the bill until later.

SB 756, Amend Bail Law/Pretrial Release Programs (Senators Clary, East, and Jones, Primary Sponsors). Chair Moore recognized Representative Hager who will explain the bill. Chair Moore recognized Representative Jordan to place the Proposed Committee Substitute before the committee. Vote called and motion passed. Chair Moore recognized Jan Paul, staff, to explain the bill. Representative Cleveland

presided a few minutes. Chair Moore recognized Representative Hager to explain bill. Discussion and debate. Chair Moore allowed the following to speak from the public on the bill: Brian Shipwash (Clerk of Superior Court, Davidson County), Judge Marcia Morey (Durham County), Phil Berger, Jr. (District Attorney in Rockingham County), Chuck Johnson (President, NC Pretrial Services Association), Lorrin Freeman (Clerk of Wake County), Bryan Collins (Public Defender in Wake County), Kevin Leonard (NC Association of County Commissioners), Deby Dihoff (NAMI North Carolina), Kim Gordon (Pretrial Services in Buncombe County), Thomas Maher (NC Office of Indigent Defense Services), and Andrew Cagle (NC Sheriffs Association). Member discussion and debate. Representative Hackney sends forth an amendment (attachment 2) regarding page 4 and lines 20-22. No vote was taken on the amendment. Chair Moore displaces the bill until the next meeting at 2:30 p.m. on June 6, 2012.

Chair Moore explains that HB 1084, HOAs/Planned Community Act Amends (Representatives Jordan, Justice, R. Moore, and Spear, Primary Sponsors) will be removed from the agenda. The committee will take up SB 756 and HB 1191 at 2:30 p.m.

The meeting adjourned at 11:55 a.m.

Respectfully submitted,

Representative Tim Moore, Chair

Nancy Garriss, Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 6, 2012
Room 415 LOB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 1008	No Televisions on Death Row.	Rules, Calendar, and Operations of the House
HB 1084	HOAs/Planned Community Act Amends.	Representative Jordan Representative Justice Representative Moore Representative Spear
HB 1173	Absconding Prob. Violators Forfeit Benefits.	Representative LaRoque Representative Saine
HB 1179	Indian Cultural Center/Terminate Lease.	Representative Graham Representative Pierce Representative Pridgen Representative Moore
HR 1191	Resolution of Disapproval of Reorganization.	Representative Cleveland
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones
SB 798	Various Emergency Management Changes.	Senator Brunstetter

ADJOURNMENT

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 6, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: HB1179 added.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1008	No Televisions on Death Row.	Rules, Calendar, and Operations of the House
HB 1084	HOAs/Planned Community Act Amends.	Representative Jordan Representative Justice Representative Moore Representative Spear
HB 1173	Absconding Prob. Violators Forfeit Benefits.	Representative LaRoque Representative Saine
HB 1179	Indian Cultural Center/Terminate Lease.	Representative Graham Representative Pierce Representative Pridgen Representative Moore
HR 1191	Resolution of Disapproval of Reorganization.	Representative Cleveland
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones
SB 798	Various Emergency Management Changes.	Senator Brunstetter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **5 PM** o'clock on **June 05, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 6, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: S756 and S798 added.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1008	No Televisions on Death Row.	Rules, Calendar, and Operations of the House
HB 1084	HOAs/Planned Community Act Amends.	Representative Jordan Representative Justice Representative Moore Representative Spear
HB 1173	Absconding Prob. Violators Forfeit Benefits.	Representative LaRoque Representative Saine
HR 1191	Resolution of Disapproval of Reorganization.	Representative Cleveland
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones
SB 798	Various Emergency Management Changes.	Senator Brunstetter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **June 05, 2011.**

☐ Principal Clerk

☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 6, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1008	No Televisions on Death Row.	Representative
HB 1084	HOAs/Planned Community Act Amends.	Representative Jordan Representative Justice Representative Moore Representative Spear
HB 1173	Absconding Prob. Violators Forfeit Benefits.	Representative LaRoque Representative Saine
HR 1191	Resolution of Disapproval of Reorganization.	Representative Cleveland
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird

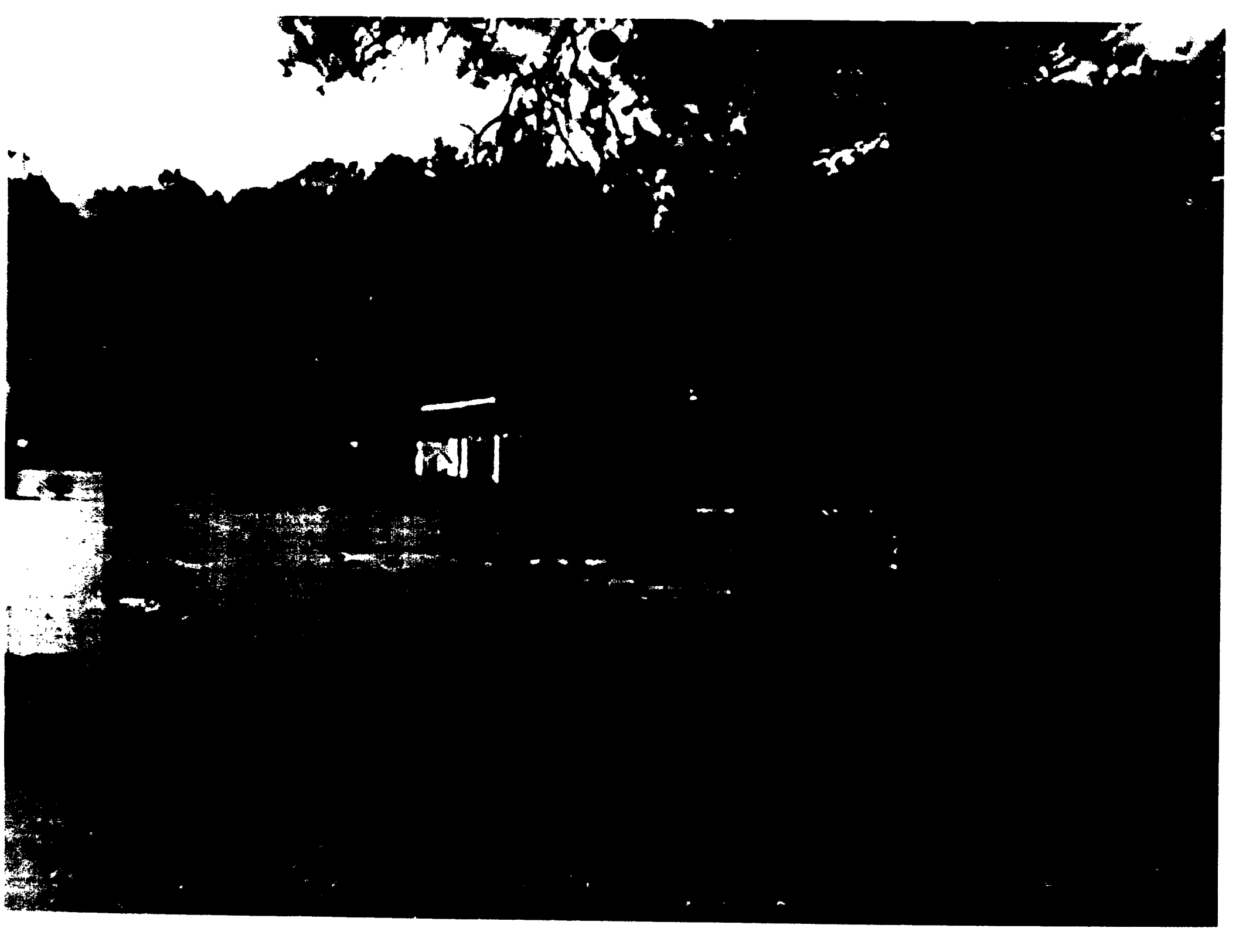
Respectfully,
Representative T. Moore, Chair

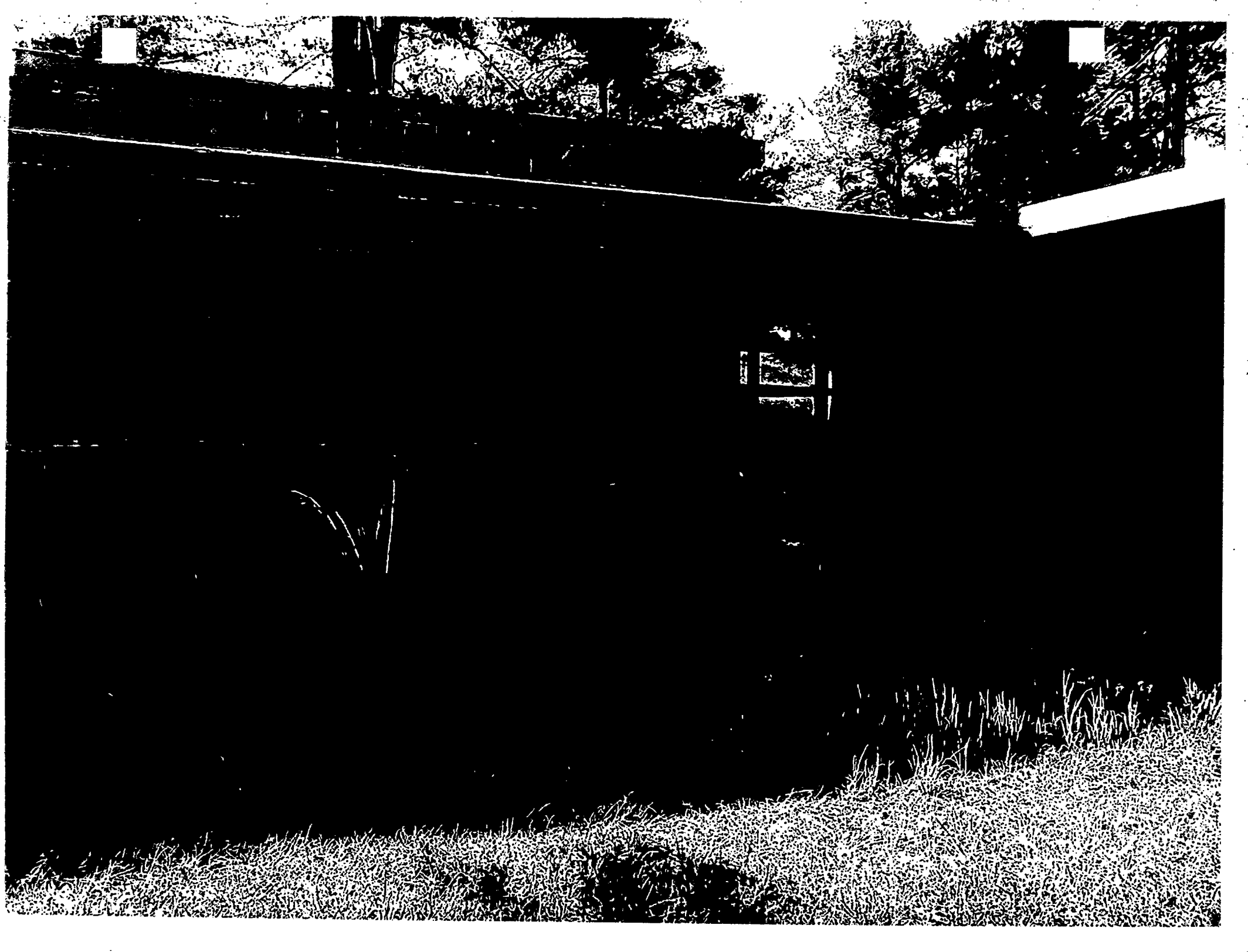
I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **June 05, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Rev. Graham - Attachment 1



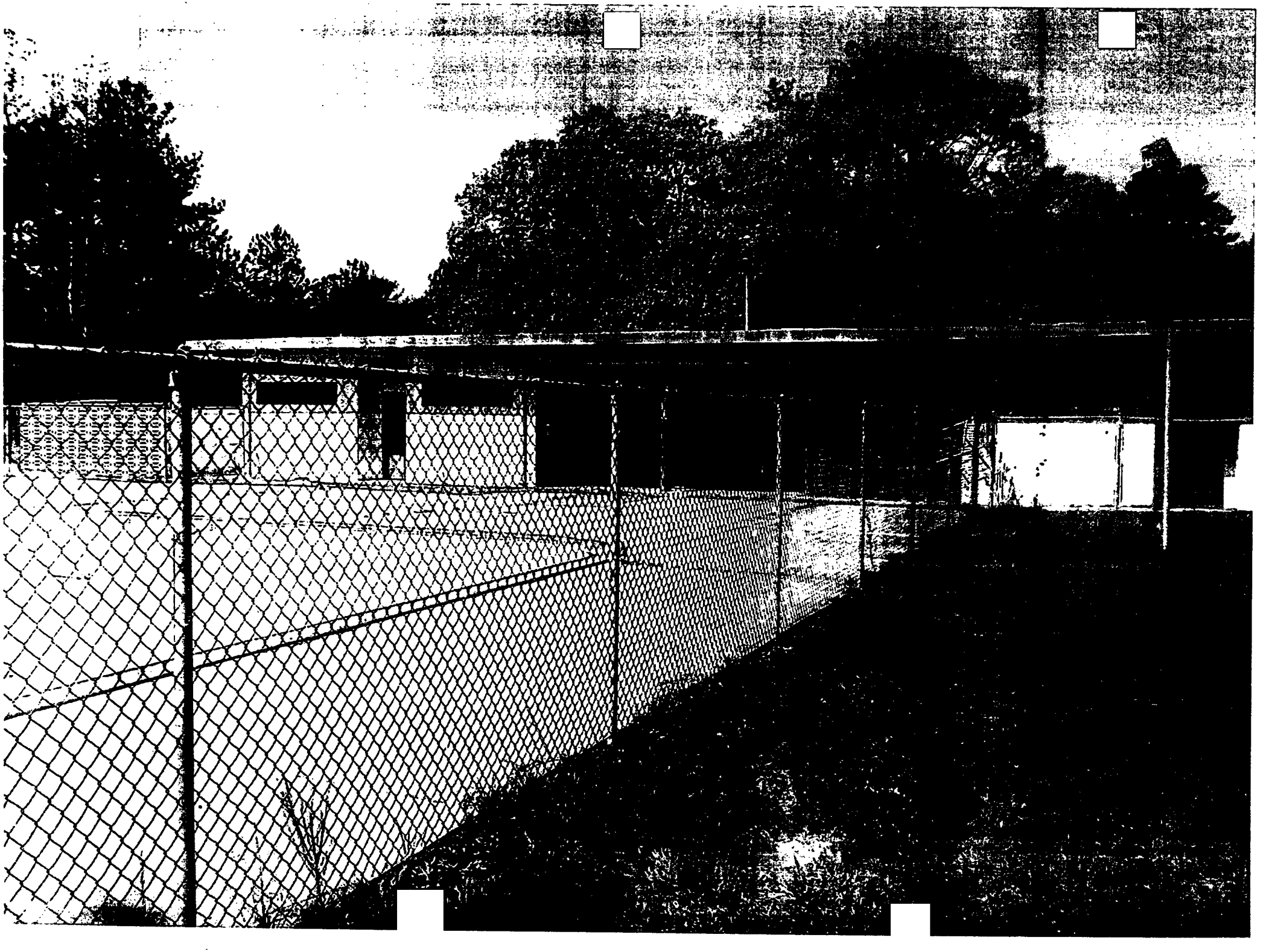


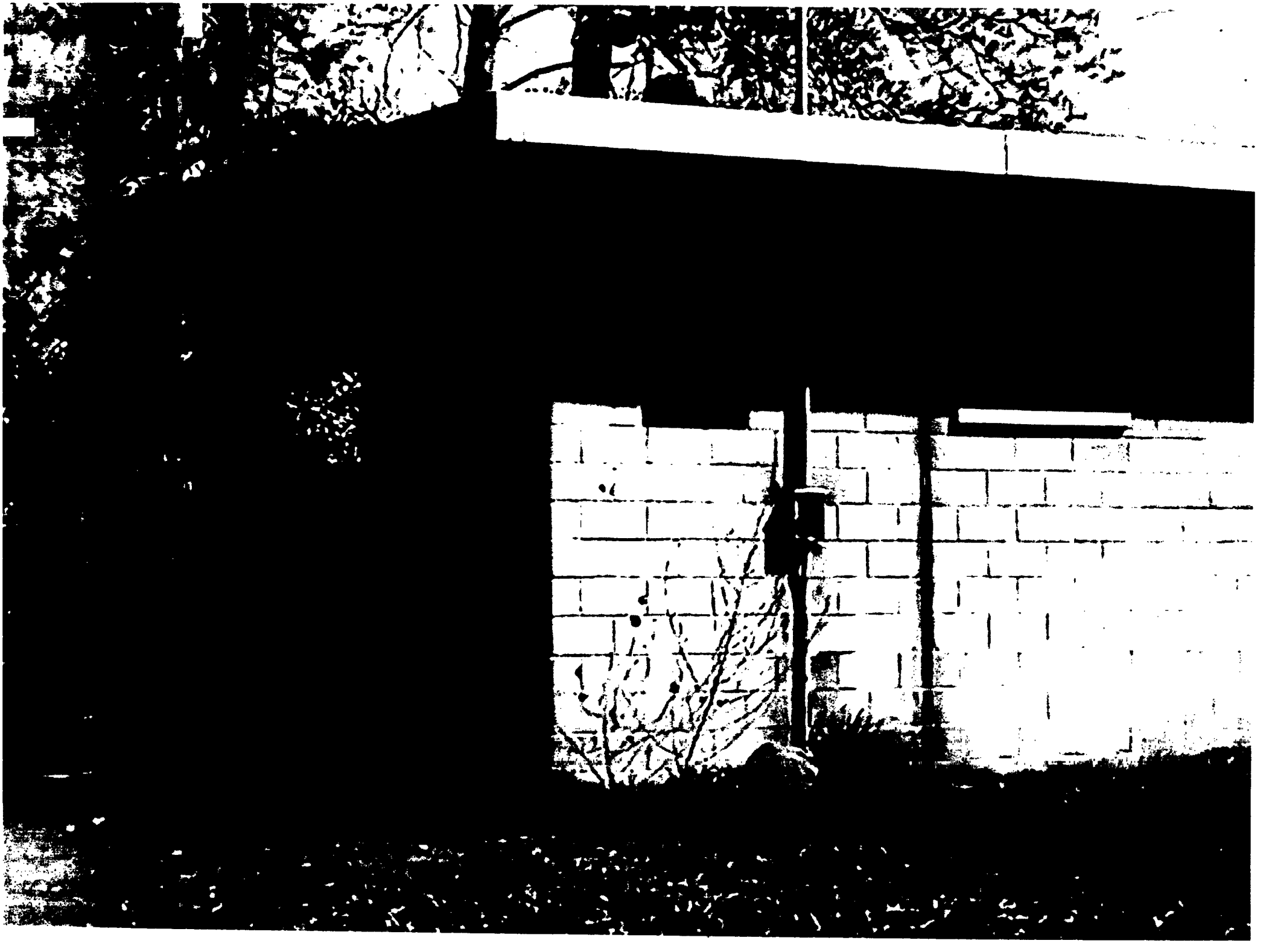


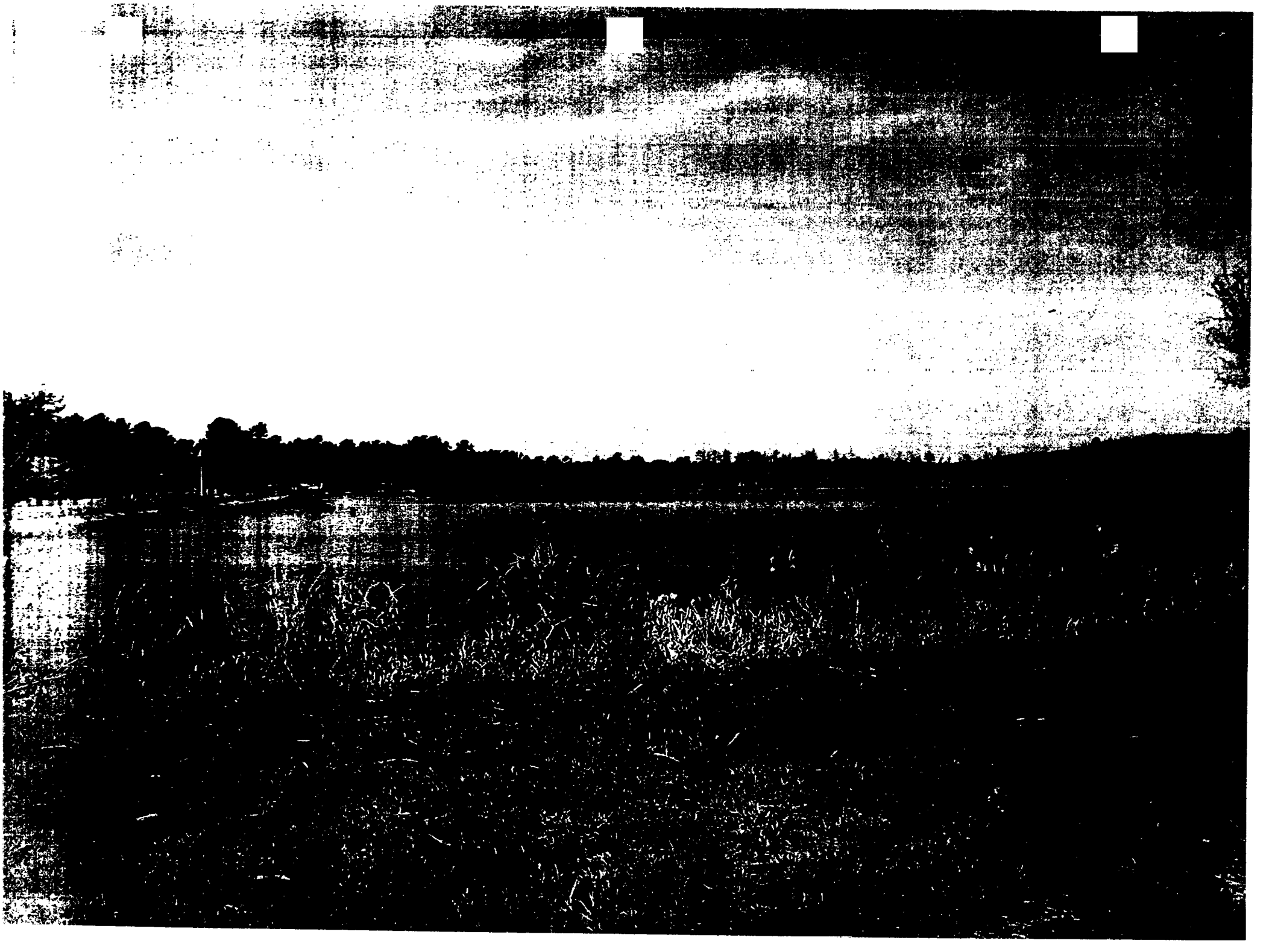


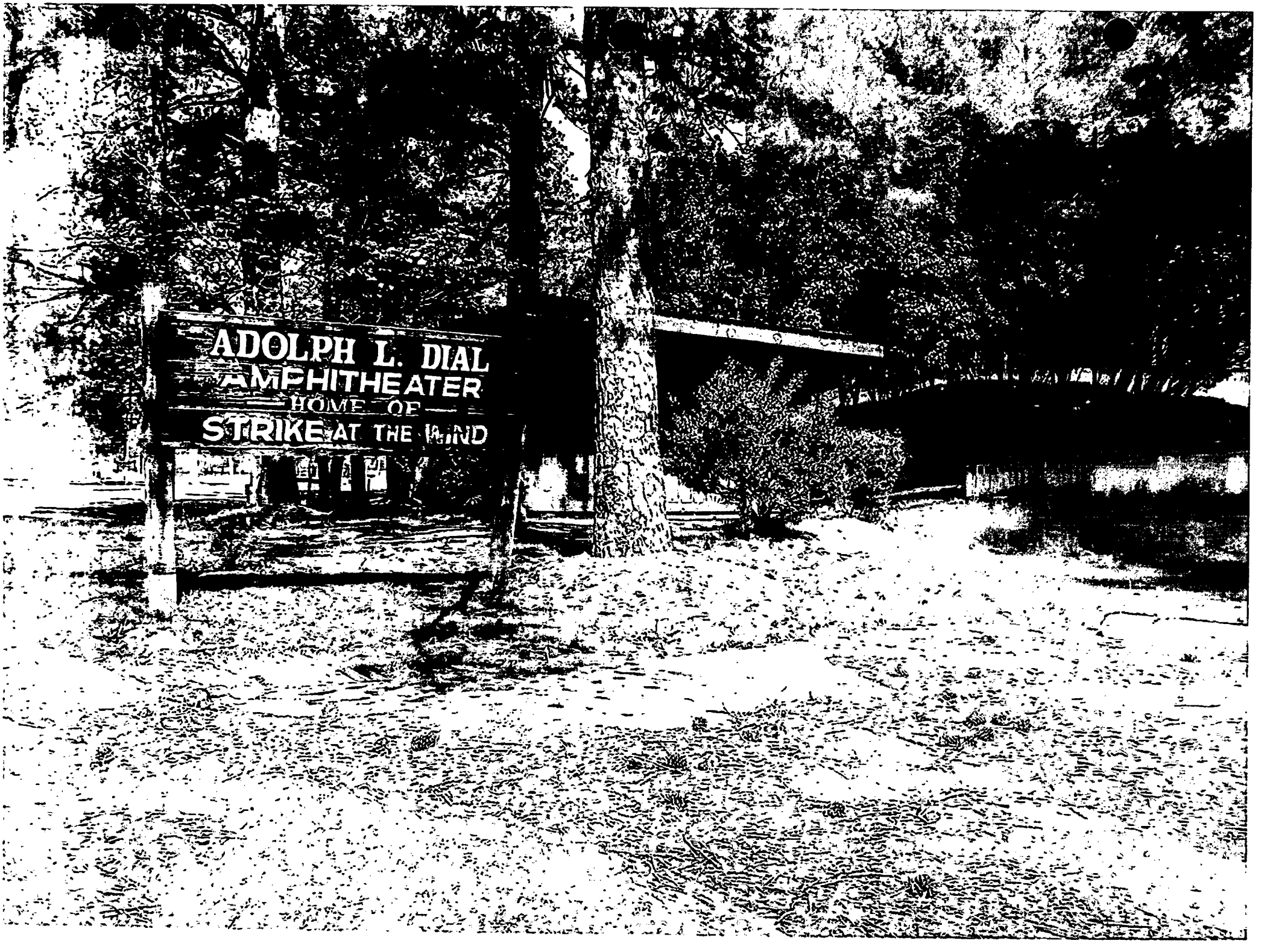










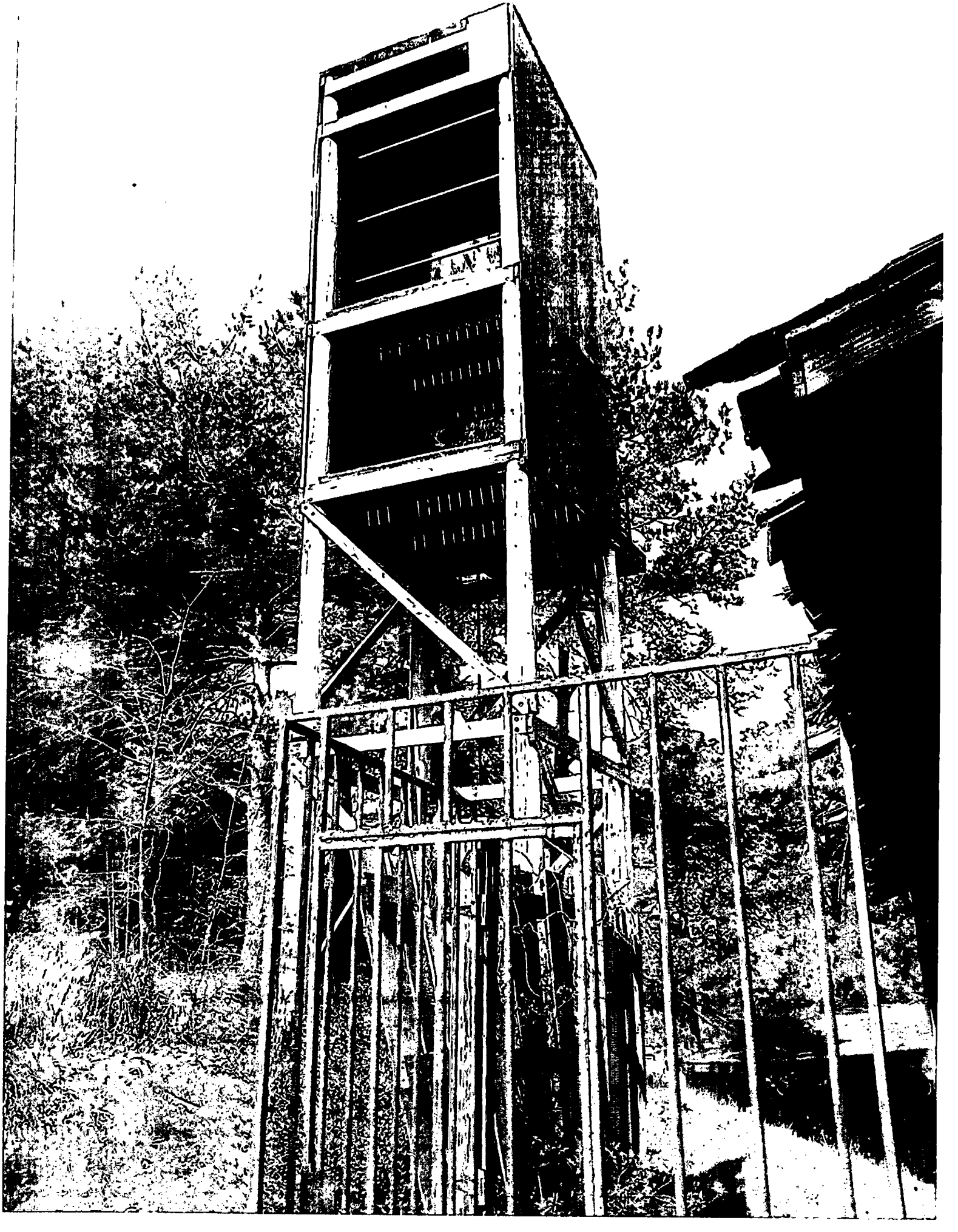

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AMPHITHEATER
HOME OF
STRIKE AT THE WIND

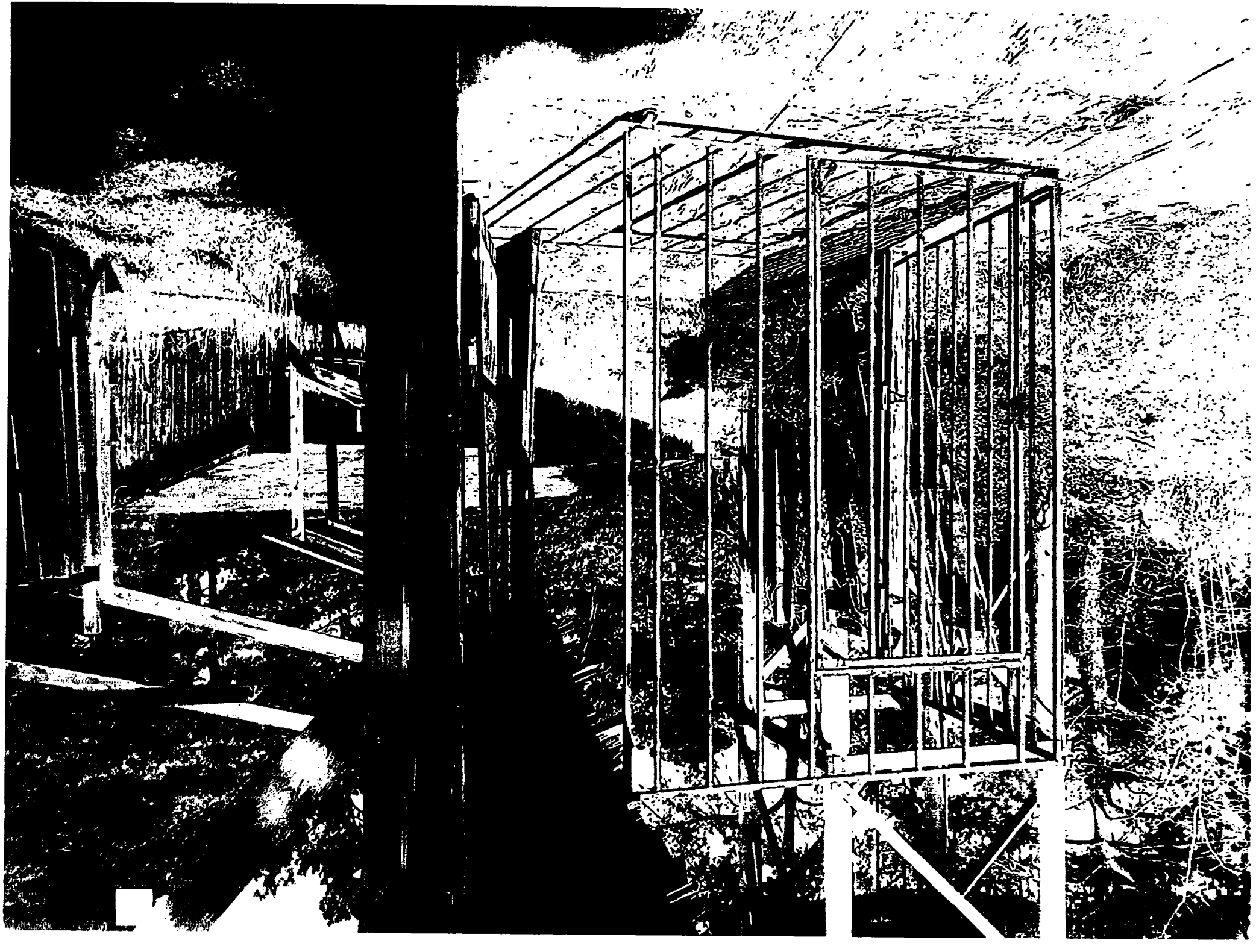


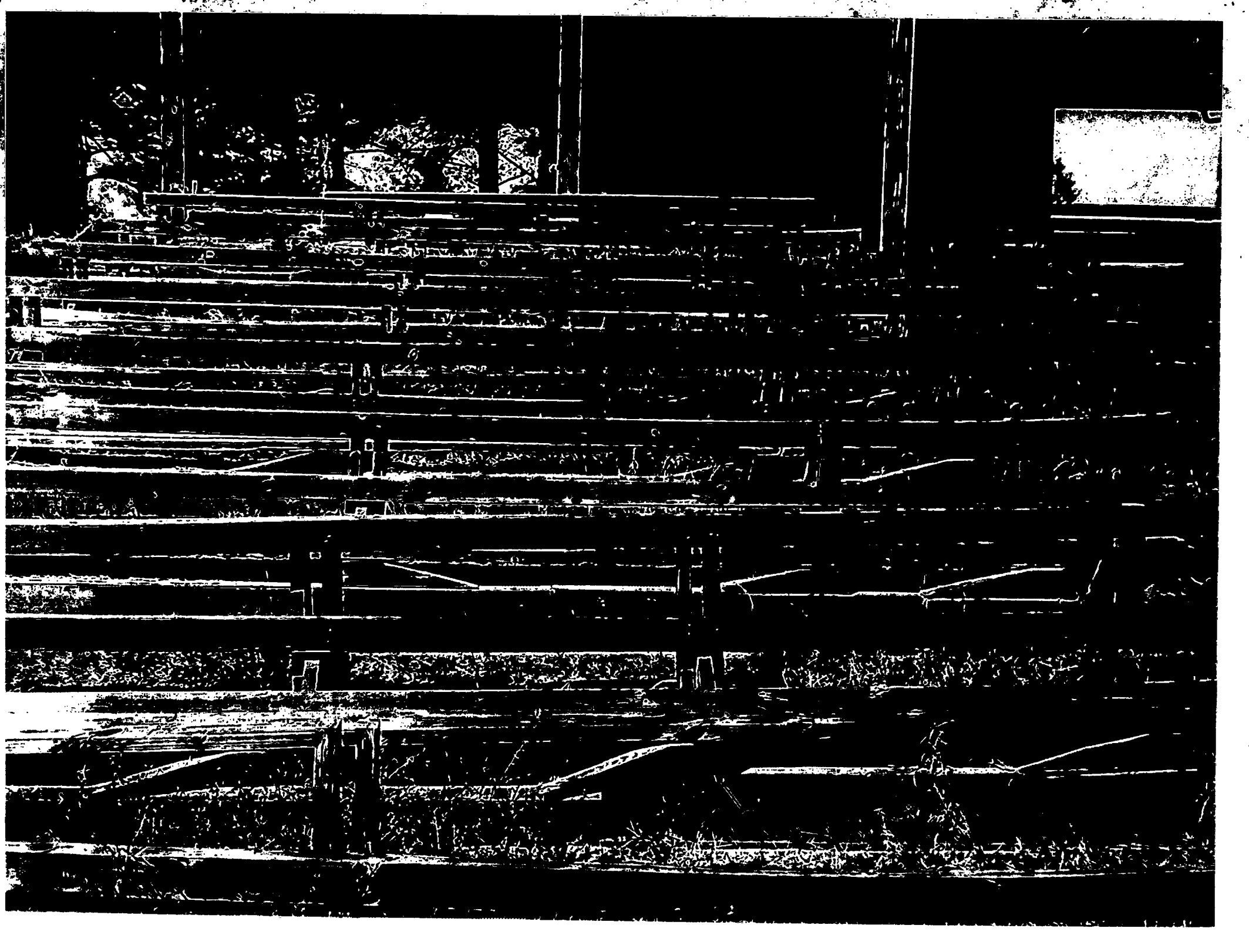












Attachment 2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-20 [v.3]

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

Date _____,2012

Representative Hackney

moves to amend the bill on page 4, lines 20-22, by deleting the sentence that begins on line 20 with the word "The" and ends on line 22.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 1173 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PROBATION VIOLATOR WHO ABSCONDS OR OTHERWISE WILLFULLY AVOIDS ARREST AFTER THE ISSUANCE OF A WARRANT SHALL FORFEIT ANY PUBLIC ASSISTANCE BENEFITS UNTIL SURRENDERING TO THE COURT.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Rep. Les Daughtry

☒With a favorable report and recommendation that the bill be re-referred to the Committee on FINANCE.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The bill/resolution is re-referred to the Committee on _____.

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐Committee Substitute for
SB 798 A BILL TO BE ENTITLED AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT STATUTES; AND TO ESTABLISH THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE SENATE SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND RESPONSE.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Rep. Les Daughtry

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 1179 A BILL TO BE ENTITLED AN ACT TO REQUIRE THE STATE TO TERMINATE ITS LEASE OF THE INDIAN CULTURAL CENTER PROPERTY; TO DIRECT HOW THE PROPERTY IS TO BE DISPOSED OF; AND TO AMEND THE STATUTORY RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Rep. Les Daughtry

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 1008 A BILL TO BE ENTITLED AN ACT TO PROHIBIT TELEVISIONS FOR DEATH ROW INMATES.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Rep. Leo Daughtry

☒With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 3

SENATE BILL 26
Judiciary I Committee Substitute Adopted 3/21/11
House Committee Substitute Favorable 5/24/12

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.
"The North Carolina Benefit Corporation Act.
"Part 1. Preliminary Provisions.

"**§ 55-18-1. Short title.**

This Article may be cited as "The North Carolina Benefit Corporation Act."

"**§ 55-18-2. Application and effect of Article.**

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall control.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"**§ 55-18-3. Definitions.**

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:

a. Failing to pursue the general public benefit purpose or any specific public benefit purpose set forth in its articles of incorporation.

b. Violating a duty or standard of conduct under this Article.

(4) Benefit officer. – The officer of the benefit corporation designated as such pursuant to G.S. 55-18-42.

(5) General public benefit. – A material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(6) Independent person. – With respect to a benefit corporation, a person who does not have any material relationship with the benefit corporation or a subsidiary of the benefit corporation, either (i) directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or (ii) indirectly as a director, an officer, a general partner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person shall not be deemed to have such a material relationship solely by virtue of serving as the benefit director or the benefit officer of the benefit corporation or of any subsidiary of the benefit corporation that is itself a benefit corporation. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

a. The person is, or has been within the last three years, an employee, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.

b. An immediate family member of the person is, or has been within the last three years, an officer, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.

c. The person, or an entity in which the person (i) is a director, an officer, a general partner, or a manager or (ii) owns, directly or indirectly, five percent (5%) or more of the outstanding equity interests, owns, directly or indirectly, five percent (5%) or more of the outstanding shares of any series or class of stock of the benefit corporation.

(7) Specific public benefit purpose. – A corporate purpose conferring any particular benefit on society or the environment, including, but not limited to, any of the following:

a. Providing low-income or underserved individuals or communities with beneficial products or services.

b. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

c. Preserving or improving the environment.

d. Improving human health.

e. Promoting the arts, sciences, or advancement of knowledge.

f. Increasing the flow of capital to entities with a public benefit purpose.

(8) Subsidiary of a person. – An entity in which the person owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting equity interests.

(9) Third-party standard. – A standard for defining, reporting, and assessing overall corporate social and environmental performance that meets all of the following requirements:

a. The standard assesses the effect of the business and its operations upon the interests listed in subdivisions (2) through (5) of G.S. 55-18-40(a).

b. The standard is developed by an entity that is independent of the benefit corporation and satisfies the following:

1. Not more than one-third of the members of the governing body of the entity are representatives of either of the following:

I. An association of businesses operating in a specific industry, the performance of whose members is measured by the standard.

II. Businesses whose performance is measured by the standard.

2. The entity is not materially financed by an association or business described in sub-sub-subdivision 1. of this sub-subdivision.

c. The standard is developed by an entity that satisfies the following:

1. Has access to necessary expertise to assess overall corporate social and environmental performance.

2. Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

d. The standard is transparent because the following information about the standard is publicly available:

1. The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria.

2. The process for the development and revision of the standard, including the following:

I. The identity of the directors, officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard.

II. The process by which revisions to the standard and changes to the membership of the governing body are made.

III. An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of "independent person" and "subsidiary" in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"**§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

A benefit corporation shall not be entitled to claim an exemption from any property tax imposed under Subchapter II of Chapter 105 of the General Statutes.

"Part 2. Adoption and Change of Status.

"**§ 55-18-20. Incorporation as a benefit corporation.**

A domestic corporation, including a domestic corporation incorporated upon a conversion effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit corporation by including in its initial articles of incorporation a provision providing that the corporation shall be a benefit corporation governed by this Article. The articles of incorporation

must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30 and must include all provisions required by, and may include any provision permitted by, G.S. 55-2-02.

"**§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

"**§ 55-18-22. Termination of benefit corporation status.**

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

"**§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

(1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.

(2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes cast by the members entitled to vote thereon.

(3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise provided in the articles of entity, operating agreement, or partnership agreement of the entity.

"Part 3. Corporate Purposes.

"§ 55-18-30. Corporate purposes.

(a) A benefit corporation shall have as one of its corporate purposes the creation of a general public benefit. A benefit corporation may include in its articles of incorporation other corporate purposes, including the purpose of engaging in any lawful business.

(b) A benefit corporation may include as a corporate purpose in its articles of incorporation one or more specific public benefit purposes in addition to its purposes under subsection (a) of this section.

(c) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose. Such an amendment must be approved by the shareholders of the benefit corporation in the manner required by G.S. 55-18-23.

"Part 4. Accountability.

"§ 55-18-40. Standard of conduct for directors.

(a) In discharging their duties as directors of a benefit corporation, directors shall consider the effects of any action or decision not to act upon the following:

(1) The shareholders of the benefit corporation.

(2) The employees and workforce of the benefit corporation, its subsidiaries, and suppliers.

(3) The interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation.

(4) The local community and society, including the interests of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

(b) In addition to the required considerations in subsection (a) of this section, a director of a benefit corporation may consider the effects of any action or decision not to act upon the following:

(1) The resources, intent, and conduct (past, stated, and potential) of any person seeking to acquire control of the benefit corporation.

(2) Other pertinent factors or the interests of any other group that the director in good faith considers to be appropriate.

(c) A director of a benefit corporation need not give priority to the interests of a particular person or group referred to in subsections (a) and (b) of this section over the interests of any other person or group unless the benefit corporation's articles of incorporation explicitly specify a priority of interests.

(d) The consideration of interests and factors in the manner required by this section shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

(e) A director is not liable for monetary damages arising out of an action under this Article with respect to any of the following:

(1) Any act taken as a director, or any omission to act as a director, other than any act or omission that the director at the time of such act or omission knew or believed to be clearly in conflict with the benefit corporation's general public benefit purpose and any specific public benefit purpose stated in its articles of incorporation.

(2) Failure of the benefit corporation to create a general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation must by resolution designate one director who is an independent person to be the benefit director. The benefit director shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit director on the following:

(1) Whether the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the benefit corporation conferred a general public benefit and any specific public benefit during the period covered by the report.

(3) Whether the directors complied with G.S. 55-18-40.

If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the benefit director shall include in the annual benefit report a description, to the extent relevant, of the ways in which the benefit corporation or its directors failed to act or comply.

(d) If a benefit corporation dispenses with a board of directors pursuant to G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the persons who perform the duties of the board of directors designate an independent person with the powers, duties, rights, and immunities of a benefit director.

(e) Regardless of whether the articles of incorporation or the bylaws of a benefit corporation include a provision limiting or eliminating the personal liability of directors authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally liable for monetary damages for any act or omission taken in such capacity unless the act or omission constitutes (i) a transaction from which the director derived an improper personal benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

"**§ 55-18-42. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) The duties of the benefit officer shall include the following:

(1) Monitoring the benefit corporation's pursuit of the general and any specific public benefit purpose of the benefit corporation and the general and any specific public benefit created by the benefit corporation.

(2) Performing such other duties to the extent provided in either of the following:

a. The bylaws of the benefit corporation.

b. A resolution adopted by the board of directors of the benefit corporation that is not in conflict with the bylaws.

(3) Preparing the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-43. Right of action; benefit enforcement proceeding.**

(a) The duties of directors under this Article may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors with respect to the duties of directors under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only by the following:

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.

b. A director.

c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary.

d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation.

(c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section.

"Part 5. Annual Reporting.

"**§ 55-18-50. Annual benefit report.**

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of all of the following:

a. The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which a general public benefit was created.

b. The manner in which the benefit corporation has pursued any specific public benefit purposes during the year and the extent to which a specific public benefit was created.

c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit purposes or the creation by the benefit corporation of a general or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity as a director.

(5) The name of each person that owns five percent (5%) or more of the outstanding shares of the benefit corporation either (i) indirectly, to the extent known to the benefit corporation without independent investigation, or (ii) of record.

(6) The statement of the benefit director described in G.S. 55-18-41(c).

(7) A statement of any relationship, including a financial or governance relationship, between the benefit corporation and the entity that developed the third-party standard that might affect the credibility of the objective assessment of the third-party standard, including any relationships between the directors, officers, or material owners of the benefit corporation and the directors, officers, or material owners of the entity that developed the third-party standard.

(b) The benefit report must be sent annually to each shareholder (i) within 120 days following the end of the fiscal year of the benefit corporation or (ii) at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

(c) A benefit corporation must post each annual benefit report on the publicly accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five years from the date the annual benefit report is first sent to shareholders. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) The annual report that a benefit corporation is required to deliver to the Secretary of Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue or Secretary of State under this section."

SECTION 2. G.S. 55-13-02(a) is amended by adding a new subdivision to read:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

...

(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter."

SECTION 3. This act becomes effective October 1, 2012.

HOUSE BILL 1173

Short Title:	Absconding Prob. Violators Forfeit Benefits.	(Public)
Sponsors:	Representatives LaRoque and Saine (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C, if favorable, Finance.	

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PROBATION VIOLATOR WHO ABSCONDS OR OTHERWISE WILLFULLY AVOIDS ARREST AFTER THE ISSUANCE OF A WARRANT SHALL FORFEIT ANY PUBLIC ASSISTANCE BENEFITS UNTIL SURRENDERING TO THE COURT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1345 is amended by adding a new subsection to read:

"(a1) Suspension of Public Assistance Benefits for Probation Violators Who Avoid Arrest. – The court may order the suspension of any public assistance benefits that are being received by a probationer for whom the court has issued an order for arrest for violation of the conditions of probation but who is absconding or otherwise willfully avoiding arrest. The suspension of benefits shall continue until such time as the probationer surrenders to the jurisdiction of the court. For purposes of this section, the term "public assistance benefits" includes unemployment benefits, Medicaid or other medical assistance benefits, Work First Family Assistance, food and nutrition benefits, any other programs of public assistance under Article 2 of Chapter 108A of the General Statutes, and any other financial assistance of any kind being paid to the probationer from State or federal funds."

SECTION 2. The Division of Social Services and the Division of Medical Assistance of the Department of Health and Human Services and the Division of Employment Security of the Department of Commerce shall adopt rules for the provision of assistance by those divisions to local law enforcement in the enforcement of this act.

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

SENATE BILL 798:
Various Emergency Management Changes

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 5, 2012
Introduced by:	Sen. Brunstetter	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***Senate Bill 798 makes various changes to the emergency management statutes and creates a Joint Oversight Emergency Management Oversight Committee.***

BACKGROUND: Article 1 of Chapter 166A is the North Carolina Emergency Management Act. It defines the responsibilities within State government for the direction and control of the State emergency management program, the different types of disaster (dependent on damage assessments), and disaster assistance programs and funding. Article 1 authorizes counties to establish and maintain emergency management agencies, appropriate funds for that purpose, and, where such local programs meet State standards, receive State and federal financial assistance.

BILL ANALYSIS:

Section 1 doubles the length of disaster declarations. A Type I disaster declaration would expire after 60 days, instead of 30; a Type II disaster would expire after 12 months, instead of 6 months; and a Type III disaster would expire after 24 months, instead of 12 months.

This section clarifies that if a federal-state aid program is created during a period of time in which a disaster declaration is in effect, aid may continue to flow pursuant to that agreement even once the underlying disaster declaration expires.

Section 2 would enact H842 from this past session. This section clarifies that immunity from liability is available for persons and entities whose property is used during an emergency only if the property is being used subject to the order or control of or pursuant to a request of a governmental entity.

This section also clarifies that immunity is available when the property is used "for activities or functions relating to emergency management" (was "sheltering, protecting, safeguarding or aiding in any way persons").

Section 3 defines the State Emergency Response Team (SERT), which has existed for years but whose existence has never been codified. The SERT is defined to include certain enumerated agencies as well as any agencies designated as belonging to it in the State Emergency Operations Plan.

Section 4 amends the Division of Emergency Management's duties to include managing the SERT.

Section 5 requires the Division of Emergency Management to coordinate with the Commissioner of Agriculture, or the Commissioner's designee to amend or revise the State Emergency Operations Plan with respect to agricultural matters.

Section 6 creates the Joint Legislative Emergency Management Oversight Committee. The Committee would consist of 12 members, 6 Senators appointed by the President Pro Tempore and 6 Representatives appointed by the Speaker of the House. The Committee is charged with examining issues of emergency management and to make ongoing recommendations to the General Assembly.

EFFECTIVE DATE: The bill is effective when it becomes law.

S798-SMTJ-69(e1) v1

**Brad Krehely and Ben Stanley contributed substantially to the drafting of this summary.*

SENATE BILL 798

Short Title:	Various Emergency Management Changes.	(Public)
Sponsors:	Senator Brunstetter.	
Referred to:	Judiciary I.	

May 16, 2012

A BILL TO BE ENTITLED

AN ACT TO MAKE VARIOUS CHANGES TO THE EMERGENCY MANAGEMENT STATUTES; AND TO ESTABLISH THE JOINT LEGISLATIVE EMERGENCY MANAGEMENT OVERSIGHT COMMITTEE, AS RECOMMENDED BY THE SENATE SELECT COMMITTEE ON EMERGENCY PREPAREDNESS AND RESPONSE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-6 reads as rewritten:

"**§ 166A-6. State of disaster.**

(a) The existence of a state of disaster may be proclaimed by the Governor, or by a resolution of the General Assembly if either of these finds that a disaster threatens or exists.

(a1) If a state of disaster is proclaimed, the Secretary shall provide the Governor and the General Assembly with a preliminary damage assessment as soon as the assessment is available. Upon receipt of the preliminary damage assessment, the Governor shall issue a proclamation defining the area subject to the state of disaster and proclaiming the disaster as a Type I, Type II, or Type III disaster. In determining whether the disaster shall be proclaimed as a Type I, Type II, or Type III disaster, the Governor shall follow the standards set forth below.

(1) A Type I disaster may be declared if all of the following criteria are met:

a. A local state of emergency has been declared pursuant to G.S. 166A-8, and a written copy of the declaration has been forwarded to the Governor;

b. The preliminary damage assessment meets or exceeds the criteria established for the Small Business Administration Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in G.S. 166A-6.01(b)(2)a.; and

c. A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared.

A Type I disaster declaration may be made by the Governor prior to, and independently of, any action taken by the Small Business Administration, the Federal Emergency Management Agency, or any other federal agency. A Type I disaster declaration shall expire ~~30 days~~60 days after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date of first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

(2) A Type II disaster may be declared if the President of the United States has issued a major disaster declaration pursuant to the Stafford Act. The Governor may request federal disaster assistance under the Stafford Act without making a Type II disaster declaration. A Type II disaster declaration shall expire ~~six months~~12 months after its issuance unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of three months ~~each, not to~~ each. A Type II disaster declaration and any renewals of that declaration shall not exceed a total of ~~12 months from the date of first issuance.~~ 24 months. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type II disaster declaration.

(3) A Type III disaster may be declared if the President of the United States has issued a major disaster declaration under the Stafford Act and:

a. The preliminary damage assessment indicates that the extent of damage is reasonably expected to meet the threshold established for an increased federal share of disaster assistance under applicable federal law and regulations; or

b. The preliminary damage assessment prompts the Governor to call a special session of the General Assembly to establish programs to meet the unmet needs of individuals or political subdivisions affected by the disaster.

A Type III disaster declaration shall expire ~~12 months~~24 months after its issuance unless renewed by the General Assembly.

(a2) Any state of disaster declared before July 1, 2001, shall terminate by a proclamation of the Governor or resolution of the General Assembly. A proclamation or resolution declaring or terminating a state of disaster shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, promptly filed with the Secretary of Public Safety, the Secretary of State and the clerks of superior court in the area to which it applies.

(a3) Expiration of a Type II or III disaster declaration shall not affect the State's obligations under federal-State agreements entered into prior to the expiration of the disaster declaration.

...."

SECTION 2. G.S. 166A-15 reads as rewritten:

"**§ 166A-15. No private liability.**

Any person, firm or ~~corporation~~ corporation, together with any successors in interest, if any, owning or controlling real or personal property who, voluntarily or involuntarily, knowingly or unknowingly, with or without compensation, grants a license or privilege or otherwise permits or allows the designation or use of the whole or any part or parts of such real or personal property for the purpose of ~~sheltering, protecting, safeguarding or aiding in any way persons shall, together with his successors in interest, if any,~~ activities or functions relating to emergency management as provided for in this Chapter or elsewhere in the General Statutes shall not be civilly liable for the death of or injury to any person or the loss of or damage to the property of any persons where such death, injury, loss or damage resulted from, through or because of the use of the said real or personal property for any of the above ~~purposes.~~purposes, provided that the use of said property is subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof."

SECTION 3. G.S. 166A-4 is amended by adding a new subdivision to read:

"(11) State Emergency Response Team. – The representative group of State agency personnel designated to carry out the emergency management support functions identified in the Plan. The State Emergency Response

Team leader shall be the Director of the Division, who shall have authority to manage the Team pursuant to G.S. 166A-5(3)a., as delegated by the Governor. The Team shall consist of the following State agencies:

a. Department of Public Safety.
b. Department of Transportation.
c. Department of Health and Human Services.
d. Department of Environment and Natural Resources.
e. Department of Agriculture and Consumer Services.
f. Any other agency identified in the North Carolina Emergency Operations Plan."

SECTION 4. G.S. 166A-5(3)a. reads as rewritten:

"(3) Functions of State Emergency Management. – The functions of the State emergency management program include:

a. Coordination of the activities of all agencies for emergency management within the State, including planning, organizing, staffing, equipping, training, testing, and the activation ~~of~~ and management of the State Emergency Response Team and emergency management programs."

SECTION 5. G.S. 166A-5(3) is amended by adding a new sub-subdivision to read:

"(3) Functions of State Emergency Management. – The functions of the State emergency management program include:

...

b1. Coordination with the State Health Director to amend or revise the North Carolina Emergency Operations Plan regarding public health matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The epidemiologic investigation of a known or suspected threat caused by nuclear, biological, or chemical agents.

...

b3. Coordination with the Commissioner of Agriculture, or the Commissioner's designee, to amend or revise the North Carolina Emergency Operations Plan regarding agricultural matters. At a minimum, the revisions to the Plan shall provide for the following:

1. The examination and testing of animals that may have been exposed to a nuclear, biological, or chemical agent.
2. The appropriate conditions for quarantine and isolation of animals in order to prevent further transmission of disease.

...."

SECTION 6. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"Article 12Q.

"Joint Legislative Emergency Management Oversight Committee.

"**§ 120-70.150. Creation and membership of Joint Legislative Emergency Management Oversight Committee.**

The Joint Legislative Emergency Management Oversight Committee is established. The Committee consists of 12 members as follows:

(1) Six members of the Senate appointed by the President Pro Tempore of the Senate; and

(2) Six members of the House of Representatives appointed by the Speaker of the House of Representatives.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 2013 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment.

"**§ 120-70.151. Purpose and powers of Committee.**

(a) The Joint Legislative Emergency Management Oversight Committee shall examine, on a continuing basis, issues related to emergency management in North Carolina in order to make ongoing recommendations to the General Assembly on ways to promote effective emergency preparedness, management, response, and recovery. The Committee may examine:

(1) Whether the State building code sufficiently addresses issues related to commercial and residential construction in hurricane and flood prone areas.

(2) The public health infrastructure in place to respond to natural and nonnatural disasters.

(3) Hurricane preparedness, evacuation, and response.

(4) Energy security issues.

(5) Terrorism preparedness and response, including bioterrorism.

(6) Flood and natural disaster preparation and response.

(7) Any other topic the Committee believes is related to its purpose.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"**§ 120-70.152. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Emergency Management Oversight Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is seven members. Only recommendations, including proposed legislation, receiving at least six affirmative votes may be included in a Committee report to the General Assembly. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The cochairs of the Committee may call upon other knowledgeable persons or experts to assist the Committee in its work.

(d) Members of the Committee shall receive subsistence and travel expenses as provided in G.S. 120-3.1, 138-5, or 138-6, as appropriate. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

(e) In appointing members to the Committee, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall take into consideration the goal of having members appointed to the Committee who have knowledge and experience relating to areas that are most impacted by disasters and emergencies."

SECTION 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 1179
PROPOSED COMMITTEE SUBSTITUTE H1179-PCS80381-RC-55

Short Title: Indian Cultural Center/Terminate Lease. (Public)

Sponsors:

Referred to:

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE TO TERMINATE ITS LEASE OF THE INDIAN CULTURAL CENTER PROPERTY AND TO DIRECT THE DISPOSITION OF THE PROPERTY.

Whereas, the State of North Carolina acquired the following tracts or parcels of land located in Maxton Township, Robeson County, for the development, use, and maintenance of an Indian Cultural Center: (i) 386.69 acres, more or less, by deed from the Riverside Country Club of Pembroke, Inc., dated April 14, 1983, recorded in Book 533, Page 164, Robeson County Registry and by deed dated August 24, 1984, recorded in Book 563, Page 254, Robeson County Registry, less and except approximately 110 acres for the use and operation of the Riverside Golf Course; (ii) 99.62 acres, more or less, by deed from Evelyn S. Morgan Abbott, dated March 25, 1988, recorded in Book 575, Page 523, Robeson County Registry; (iii) 10 acres, more or less, by deed from H.C. Locklear, et ux, dated December 12, 1985, recorded in Book 586, Page 142, Robeson County Registry; and (iv) 42.50 acres, more or less, by deed from Ronald Revels and wife, Dorisetta Revels, dated December 17, 1996, recorded in Book 931, Page 415, Robeson County Registry; and

Whereas, pursuant to Chapter 1074 of the 1989 Session Laws, as amended by Chapter 900 of the 1991 Session Laws and Chapter 88 of the 1993 Session Laws, the General Assembly directed that the State of North Carolina enter into a 99-year lease of the Indian Cultural Center property with a North Carolina nonprofit entity known as the North Carolina Indian Cultural Center, Inc. (NCICC); and

Whereas, the State of North Carolina entered into a 99-year lease agreement, dated May 12, 1994, with NCICC, which lease was subsequently amended on December 9, 1997, and June 6, 2001, in accordance with S.L. 1997-41 and S.L. 2001-89 (collectively, the "lease"); and

Whereas, the lease provides in paragraph 8 that the Indian Cultural Center property is to "be maintained and improved, at no cost or expense to the [State of North Carolina], for those activities covered by the original charter of [T]he North Carolina Indian Cultural Center, Inc., on file with the North Carolina Secretary of State"; and

Whereas, as provided in its charter, the organizational purposes of NCICC are, in part: "a. [t]o respectfully present to the public accurate information on Native North American history, art, and culture"; and "b. [t]o develop, establish, manage, furnish, equip, maintain, preserve, exhibit and interpret to the public the North Carolina Indian Cultural Center with its Indian villages, arts and crafts, archaeological digs, museums, art exhibits, library, visitors'

center, recreational facilities, entertainment, restaurants, concessions, and other related operations of an artistic, economic development, educational, and cultural nature"; and

Whereas, in addition to the maintenance requirements of paragraph 8, paragraphs 16 and 20 of the lease require NCICC to maintain during its term of possession, at its expense, the Indian Cultural Center property and all permanent structures located on the property in accordance with all applicable laws, rules, ordinances, orders, and regulations of State and county governmental agencies; and

Whereas, in March 2010, the Office of State Construction assessed the condition of the improvements at the Indian Cultural Center property, from which assessment it appears that the improvements on the property have not been maintained as required in paragraphs 8, 16, and 20 of the lease; and

Whereas, subsequently, the North Carolina Department of Insurance conducted a fire and safety inspection at the Indian Cultural Center property, from which inspection it appears that the improvements on the property have not been maintained as required in paragraphs 8, 16, and 20 of the lease; and

Whereas, the Riverside Golf Course, comprising approximately 110 acres, is contiguous to Indian Cultural Center property and uses as a means of access the main road extending through the Indian Cultural Center property; and

Whereas, pursuant to paragraph 13 of the lease, the State of North Carolina retained the right of ingress and egress, both vehicular and pedestrian, over the main road extending through the Indian Cultural Center property for the purpose of accessing the Riverside Golf Course; and

Whereas, NCICC has hindered or prevented access to the Riverside Golf Course by the State, its lessees, contractors, and invitees by changing the locks on the entrance gate to the Indian Cultural Center property and by other means; and

Whereas, paragraph 25 of the lease requires NCICC to keep in force and maintain throughout the term of the lease, fire and extended coverage insurance on the permanent structures located on the Indian Cultural Center property; and

Whereas, pursuant to paragraph 26 of the lease, NCICC is required to keep in force, for the mutual benefit of the State and NCICC, at no cost to the State, comprehensive broad form general public liability insurance on the terms and conditions set forth in the lease; and

Whereas, NCICC has failed to provide evidence to the State that the insurance required under paragraphs 25 and 26 of the lease is in force; and

Whereas, upon consultation with the Department of Administration, the Office of the Attorney General provided NCICC with notice in a letter dated January 18, 2011, that NCICC was in breach of its obligations under the lease for defaults that included some of those set forth above; and

Whereas, the General Assembly also finds that NCICC is, and has been for some time, in breach of its obligations under the lease for the defaults set forth above and other defaults and that it would be in the best interest of the State if the lease were terminated and existing law amended to allow the State of North Carolina to effect an alternate arrangement for the disposition and management of the Indian Cultural Center property other than the lease with NCICC; and

Whereas, pursuant to subsection (a) of Section 18 of Chapter 1074 of the 1989 Session Laws, as amended by Section 22 of Chapter 900 of the 1991 Session Laws, Section 1 of Chapter 88 of the 1993 Session Laws, Section 33 of Chapter 561 of the 1993 Session Laws, Section 1 of S.L. 1997-41, and Section 1 of S.L. 2001-89, the Riverside Golf Course was excluded from the real property subject to the lease and operated for a period of time under separate lease agreements; and

Whereas, the Riverside Golf Course is not currently in operation and all lease agreements for the Riverside Golf Course have either expired or allow for termination upon 30 days' notice by the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Termination of lease and repossession of land. – Notwithstanding the provisions of subsection (a) of Section 18 of Chapter 1074 of the 1989 Session Laws, as amended by subsection (e) of Section 22 of Chapter 900 of the 1991 Session Laws, Section 1 of Chapter 88 of the 1993 Session Laws, Section 33 of Chapter 561 of the 1993 Session Laws, Section 1 of S.L. 1997-41, and Section 1 of S.L. 2001-89, the State of North Carolina shall immediately terminate its lease of the Indian Cultural Center property and repossess the property.

SECTION 2. Disposition of reacquired land. – After termination of the lease and repossession of the Indian Cultural Center property, the Department of Administration shall dispose of the Indian Cultural Center property, including the Riverside Golf Course, in accordance with applicable provisions of law and shall attempt to dispose of it in such a way that ensures that it will continue to serve the following purposes:

(1) The preservation, exhibition, and interpretation of Native North American arts, crafts, and artifacts.

(2) The provision of information to the public on Native North American history and culture.

(3) The installation of new and the renovation of existing public recreational and entertainment facilities.

(4) The cultivation of economic development enterprises.

SECTION 3. No Governor or Council of State approval. – Notwithstanding any other provision of law, a disposition of the property pursuant to Section 2 of this act shall require neither Governor nor Council of State approval.

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

HOUSE BILL 1179

Short Title:	Indian Cultural Center/Terminate Lease.	(Public)
Sponsors:	Representatives Graham, Pierce, Pridgen, and T. Moore (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Finance.	

May 30, 2012

A BILL TO BE ENTITLED

AN ACT TO REQUIRE THE STATE TO TERMINATE ITS LEASE OF THE INDIAN CULTURAL CENTER PROPERTY; TO DIRECT HOW THE PROPERTY IS TO BE DISPOSED OF; AND TO AMEND THE STATUTORY RECOGNITION OF THE LUMBEE TRIBE OF NORTH CAROLINA.

Whereas, the State of North Carolina acquired the following tracts or parcels of land located in Maxton Township, Robeson County, for the development, use, and maintenance of an Indian Cultural Center: (i) 386.69 acres, more or less, by deed from the Riverside Country Club of Pembroke, Inc., dated April 14, 1983, recorded in Book 533, Page 164, Robeson County Registry and by deed dated August 24, 1984, recorded in Book 563, Page 254, Robeson County Registry, less and except approximately 110 acres for the use and operation of the Riverside Golf Course; (ii) 99.62 acres, more or less, by deed from Evelyn S. Morgan Abbott, dated March 25, 1988, recorded in Book 575, Page 523, Robeson County Registry; (iii) 10 acres, more or less, by deed from H.C. Locklear, et ux, dated December 12, 1985, recorded in Book 586, Page 142, Robeson County Registry; and (iv) 42.50 acres, more or less, by deed from Ronald Revels and wife, Dorisetta Revels, dated December 17, 1996, recorded in Book 931, Page 415, Robeson County Registry; and

Whereas, pursuant to Chapter 1074 of the 1989 Session Laws, as amended by Chapter 900 of the 1991 Session Laws and Chapter 88 of the 1993 Session Laws, the General Assembly directed that the State of North Carolina enter into a 99-year lease of the Indian Cultural Center property with a North Carolina nonprofit entity known as the North Carolina Indian Cultural Center, Inc. (NCICC); and

Whereas, the State of North Carolina entered into a 99-year lease agreement, dated May 12, 1994, with NCICC, which lease was subsequently amended on December 9, 1997, and June 6, 2001, in accordance with S.L. 1997-41 and S.L. 2001-89 (collectively, the "lease"); and

Whereas, the lease provides in paragraph 8 that the Indian Cultural Center property is to "be maintained and improved, at no cost or expense to the [State of North Carolina], for those activities covered by the original charter of [T]he North Carolina Indian Cultural Center, Inc., on file with the North Carolina Secretary of State"; and

Whereas, as provided in its charter, the organizational purposes of NCICC are, in part: "a. [t]o respectfully present to the public accurate information on Native North American history, art, and culture"; and "b. [t]o develop, establish, manage, furnish, equip, maintain, preserve, exhibit and interpret to the public the North Carolina Indian Cultural Center with its Indian villages, arts and crafts, archaeological digs, museums, art exhibits, library, visitors'

center, recreational facilities, entertainment, restaurants, concessions, and other related operations of an artistic, economic development, educational, and cultural nature"; and

Whereas, in addition to the maintenance requirements of paragraph 8, paragraphs 16 and 20 of the lease require NCICC to maintain during its term of possession, at its expense, the Indian Cultural Center property and all permanent structures located on the property in accordance with all applicable laws, rules, ordinances, orders, and regulations of State and county governmental agencies; and

Whereas, in March 2010, the Office of State Construction assessed the condition of the improvements at the Indian Cultural Center property, from which assessment it appears that the improvements on the property have not been maintained as required in paragraphs 8, 16, and 20 of the lease; and

Whereas, subsequently, the North Carolina Department of Insurance conducted a fire and safety inspection at the Indian Cultural Center property, from which inspection it appears that the improvements on the property have not been maintained as required in paragraphs 8, 16, and 20 of the lease; and

Whereas, the Riverside Golf Course, comprising approximately 110 acres, is contiguous to Indian Cultural Center property and uses as a means of access the main road extending through the Indian Cultural Center property; and

Whereas, pursuant to paragraph 13 of the lease, the State of North Carolina retained the right of ingress and egress, both vehicular and pedestrian, over the main road extending through the Indian Cultural Center property for the purpose of accessing the Riverside Golf Course; and

Whereas, NCICC has hindered or prevented access to the Riverside Golf Course by the State, its lessees, contractors, and invitees by changing the locks on the entrance gate to the Indian Cultural Center property and by other means; and

Whereas, paragraph 25 of the lease requires NCICC to keep in force and maintain throughout the term of the lease, fire and extended coverage insurance on the permanent structures located on the Indian Cultural Center property; and

Whereas, pursuant to paragraph 26 of the lease, NCICC is required to keep in force, for the mutual benefit of the State and NCICC, at no cost to the State, comprehensive broad form general public liability insurance on the terms and conditions set forth in the lease; and

Whereas, NCICC has failed to provide evidence to the State that the insurance required under paragraphs 25 and 26 of the lease is in force; and

Whereas, upon consultation with the Department of Administration, the Office of the Attorney General provided NCICC with notice in a letter dated January 18, 2011, that NCICC was in breach of its obligations under the lease for defaults that included some of those set forth above; and

Whereas, the General Assembly also finds that NCICC is, and has been for some time, in breach of its obligations under the lease for the defaults set forth above and other defaults and that it would be in the best interest of the State if the lease were terminated and existing law amended to allow the State of North Carolina to effect an alternate arrangement for the disposition and management of the Indian Cultural Center property other than the lease with NCICC; and

Whereas, pursuant to subsection (a) of Section 18 of Chapter 1074 of the 1989 Session Laws, as amended by Section 22 of Chapter 900 of the 1991 Session Laws, Section 1 of Chapter 88 of the 1993 Session Laws, Section 33 of Chapter 561 of the 1993 Session Laws, Section 1 of S.L. 1997-41, and Section 1 of S.L. 2001-89, the Riverside Golf Course was excluded from the real property subject to the lease and operated for a period of time under separate lease agreements; and

Whereas, the Riverside Golf Course is not currently in operation and all lease agreements for the Riverside Golf Course have either expired or allow for termination upon 30 days' notice by the State; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Termination of lease and repossession of land. – Notwithstanding the provisions of subsection (a) of Section 18 of Chapter 1074 of the 1989 Session Laws, as amended by subsection (e) of Section 22 of Chapter 900 of the 1991 Session Laws, Section 1 of Chapter 88 of the 1993 Session Laws, Section 33 of Chapter 561 of the 1993 Session Laws, Section 1 of S.L. 1997-41, and Section 1 of S.L. 2001-89, the State of North Carolina shall immediately terminate its lease of the Indian Cultural Center property and repossess the property.

SECTION 2. Disposition of reacquired land. – After termination of the lease and repossession of the Indian Cultural Center property, the Department of Administration shall dispose of the Indian Cultural Center property, including the Riverside Golf Course, in accordance with applicable provisions of law and shall attempt to dispose of it in such a way that ensures that it will continue to serve the following purposes:

(1) The preservation, exhibition, and interpretation of Native North American arts, crafts, and artifacts.

(2) The provision of information to the public on Native North American history and culture.

(3) The installation of new and the renovation of existing public recreational and entertainment facilities.

(4) The cultivation of economic development enterprises.

SECTION 3. No Governor or Council of State approval. – Notwithstanding any other provision of law, a disposition of the property pursuant to Section 2 of this act shall require neither Governor nor Council of State approval.

SECTION 4. G.S. 71A-3 reads as rewritten:

"**§ 71A-3. Lumbee Tribe of North Carolina; rights, privileges, immunities, obligations and duties.**

The Indians now residing in Robeson and adjoining counties of North Carolina, originally found by the first white settlers on the Lumbee River in Robeson County, and claiming joint descent from remnants of early American Colonists and certain tribes of Indians originally inhabiting the coastal regions of North Carolina, who have previously been known as "Croatan Indians," "Indians of Robeson County," and "Cherokee Indians of Robeson County," shall, from and after April 20, 1953, be designated and officially recognized as Lumbee Tribe of North Carolina and shall continue to enjoy ~~all rights, privileges and immunities enjoyed by them as citizens of the State as now provided by law, and shall continue to be subject to all the obligations and duties of citizens under the law.~~all their rights, privileges, and immunities as an American Indian Tribe with a recognized tribal governing body carrying out and exercising substantial governmental duties and powers similar to the State, being recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

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

HOUSE BILL 1008:
No Televisions on Death Row

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 5, 2012
Introduced by:	Committee on Rules, Calendar, and Operations of the House	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	First Edition		

SUMMARY: ***House Bill 1008 would prohibit the Division of Adult Correction, Department of Correction, from providing televisions to inmates serving sentences on death row.***

BILL ANALYSIS: House Bill 1008 would create a new G.S. 148-23.3 to provide as the "Summary," above, indicates.

EFFECTIVE DATE: This act is effective when it becomes law.

H1008-SMTJ-70(e1) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 1

HOUSE BILL 1008

Short Title:	No Televisions on Death Row.	(Public)
Sponsors:	Committee on Rules, Calendar, and Operations of the House (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

May 21, 2012

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT TELEVISIONS FOR DEATH ROW INMATES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 148 of the General Statutes is amended by adding a new section to read:

"**§ 148-23.3. Televisions prohibited for death row inmates.**

The Division of Adult Correction of the Department of Correction shall not provide televisions to any inmates serving sentences on death row."

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

HOUSE SIMPLE RESOLUTION 1191: Resolution of Disapproval of Reorganization

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 6, 2012
Introduced by:	Rep. Cleveland	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Resolution 1191 would disapprove Executive Order No. 85, which ordered the consolidation and reorganization of Executive Branch agencies, so that the Executive Order does not go into effect and become law upon adjournment sine die of the session pursuant to Section 5(10) of Article III of the North Carolina Constitution.***

CURRENT LAW: Section 5 of Article III of the North Carolina Constitution sets out the duties of the Governor. Subsection (10) authorizes the Governor to make changes in the allocation of offices and agencies of the State and in their functions, powers, and duties, as necessary for efficient administration. If the changes affect existing law, they must be set forth in executive orders, which then go into effect and become law upon adjournment sine die of the session in which they were submitted, unless specifically disapproved by either house of the General Assembly or specifically modified by both houses.

On March 25, 2011, the Governor issued Executive Order No. 85 (see text in its entirety below). The Order provides for the consolidation and reorganization of the Executive Branch and will go into effect upon adjournment sine die of this session, unless it is disapproved or modified. In the meantime, the General Assembly has passed legislation dealing with issues raised in the Order.

BILL ANALYSIS: House Resolution 1191 would specifically disapprove Executive Order No. 85 so that it would not go into effect and become law upon adjournment sine die of the session.

EFFECTIVE DATE: The resolution would be effective upon adoption.

BACKGROUND: The full text of Executive Order No. 85 is included below:

EXECUTIVE ORDER NO. 85

CONSOLIDATION AND REORGANIZATION OF EXECUTIVE BRANCH

AGENCIES TO IMPROVE THE EFFICIENCY OF STATE GOVERNMENT

WHEREAS, the North Carolina Constitution gives the Governor the power to submit to the General Assembly changes, elimination, consolidation and reorganization of the powers, duties and functions of the agencies and departments within the Executive Branch of State Government whenever the Governor determines that such action is in the best interest of the State; and

WHEREAS, a principal reason for exercising this power is to ensure that State government services are delivered in an effective and coordinated way; and

WHEREAS, the Governor has the responsibility to spend tax dollars wisely and efficiently; and

WHEREAS, I have determined that the State of North Carolina is in a time of economic challenge, such that the way State Government has operated must change in order to continue to deliver critical services to North Carolina citizens.

NOW, THEREFORE, pursuant to the powers conferred on me as Governor by Article III, Section 5(10) of the Constitution and the laws of North Carolina, as a first step in the process of reorganizing State Government, IT IS ORDERED:

The Executive Branch of State Government is hereby consolidated and reorganized as provided herein.

Section 1. Use of Terms

For purposes of this Executive Order, the terms "Type I Transfer" and "Type II Transfer" shall have the meaning prescribed by the General Assembly in the Executive Organization Act of 1971, N.C. Gen. Stat. § 143A-6, and the terms "Agency," "Board," "Commission," "Committee," "Council," "Division," "Head of Department," and "Principal State Department" shall have the meaning prescribed by the General Assembly in the Executive Organization Act of 1973, N.C. Gen. Stat. § 143B-3.

Section 2. Applicability to Departments and Agencies

This Executive Order is applicable to the following departments and agencies: the Department of Administration, the Department of Commerce, the Department of Correction, the Department of Crime Control and Public Safety, the Department of Cultural Resources, the Department of Environment and Natural Resources, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Revenue, the Department of Transportation, the Office of State Personnel, the Office of State Budget and Management, the Office of Information Technology Services, and the Employment Security Commission.

Section 3. Statutes Remain in Effect

Except as herein expressly modified, the provisions of Chapters 143, 143A and 143B of the North Carolina General Statutes remain in force.

Section 4. Department of Management and Administration

The Office of State Personnel and the Office of Information Technology Services are hereby consolidated into the Department of Administration. The Department of Administration, as established by N.C. Gen. Stat. § 143B-366, is hereby renamed the Department of Management and Administration. All powers, duties, functions and obligations heretofore vested in the former Department of Administration, and any subunit or

division of the former Department of Administration, are hereby vested in the Department of Management and Administration. All references in the General Statutes or laws of the State to the "Department of Administration" are hereby deleted and replaced with the "Department of Management and Administration." All references to the "Secretary of Administration" in the General Statutes or laws of the State are hereby deleted and replaced with the "Secretary of Management and Administration." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Administration. Where the former Department of Administration or a division or other subunit of the former Department of Administration is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Management and Administration.

a. The Office of State Personnel, as established by N.C. Gen. Stat. § 126-3, is transferred to the Department of Management and Administration by a Type I transfer. All powers, duties and functions of the Office of State Personnel as specified in N.C. Gen. Stat. Chapter 126 and as specified elsewhere in the laws of this State are transferred to the Department of Management and Administration. All powers and duties of the Office of State Personnel specifically enumerated in N.C. Gen. Stat. § 126-3 are added to those powers and duties of the Department of Management and Administration specified in N.C. Gen. Stat. § 143-341. All references in the General Statutes or laws of the State to the "Office of State Personnel" are hereby deleted and replaced with the "Department of Management and Administration." All references in the General Statutes or laws of the State to the "State Personnel Director" are hereby deleted and replaced with the "Secretary of Management and Administration or the Secretary's designee." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Office of State Personnel. Where the former Office of State Personnel or a division or other subunit of the former Office of State Personnel is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Management and Administration. State employees currently employed by and under the supervision of the former State Personnel Director and the former Office of State Personnel are hereby transferred to the supervision of the Secretary of Management and Administration. Additionally, to ensure the consistent application of human resource policies and practices, the human resource functions within the Cabinet State Agencies will be centralized within the Department of Management and Administration. All human resources positions, professional development/training positions, and safety officer positions, and all related administrative support positions and budgets, will be transferred to the supervision of the Secretary of Management and Administration. The Department of Management and Administration, in conjunction with the Office of State Budget and Management, will review such agency positions to determine which positions will be transferred to the Department of Management and Administration. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

b. The Office of Information Technology Services, as established by N.C. Gen. Stat. Chapter 147, Article 3D, is hereby transferred to the Department of Management and Administration by a Type I transfer. All powers,

duties and functions of the Office of Information Technology Services as specified in N.C. Gen. Stat. Chapter 147, Article 3D and as specified elsewhere in the laws of this State are transferred to the Department of Management and Administration. All powers and duties of the Office of Information Technology Services specifically enumerated in N.C. Gen. Stat. §§ 147-33.82 and 147-33.83 are added to those powers and duties of the Department of Management and Administration specified in N.C. Gen. Stat. § 143-341. All references in the General Statutes or laws of the State to the "Office of Information Technology" are hereby deleted and replaced with the "Department of Management and Administration." All references in the General Statutes or laws of the State to the "State Chief Information Officer" are hereby deleted and replaced with the "Secretary of Management and Administration or the Secretary's designee." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Office of Information Technology Services. Where the former Office of Information Technology Services or a division or other subunit of the former Office of Information Technology Services is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Management and Administration. State employees currently employed by and under the supervision of the former State Chief Information Officer and the former Office of Information Technology Services are hereby transferred to the supervision of the Secretary of Management and Administration. Additionally, all employees within the Cabinet State Agencies who serve in the position of or exercise the responsibility of Chief Information Officer are hereby transferred to the supervision of the Secretary of Management and Administration. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

c. All commissions, boards, councils, committees or other similar entities established under or administratively housed in the Office of State Personnel or the Office of Information Technology Services are hereby transferred to the Department of Management and Administration. Such entities shall continue to exercise their authority and power as currently provided in the laws of the State.

d. The Codifier of Rules shall reorganize the North Carolina Administrative Code, including specifically Titles 1, 9 and 25, to reflect the aforementioned consolidation of the former Department of Administration, the former Office of State Personnel, and the former Office of Information Technology Services into the Department of Management and Administration. The Codifier of Rules shall make changes in the text of any affected rules to reflect changes in the organizational structure of the Department of Management and Administration. The changes by the Codifier are exempt from the requirements of Chapter 150B of the General Statutes and do not require the review or approval of the Rules Review Commission.

Section 5. Department of Public Safety

There is hereby established and created a principal department to be known as the Department of Public Safety. Any reference in the General Statutes or laws of the State to the "principal departments" as enumerated in N.C. Gen. Stat. § 143B-6 or to "cabinet agencies" or "cabinet departments" is hereby deemed

to include the Department of Public Safety. The Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Crime Control and Public Safety are hereby consolidated into the Department of Public Safety. The Department of Public Safety shall be headed by the Secretary of Public Safety, who shall be appointed by and serve at the pleasure of the Governor. The Department of Public Safety shall include, but not be limited to, the following three divisions: the Division of Corrections, the Division of Juvenile Justice and Delinquency Prevention, and the Division of Crime Control and Emergency Management.

a. The Department of Correction, as established in N.C. Gen. Stat. § 143B-260, is hereby transferred to the Department of Public Safety by a Type I transfer. All powers, duties and functions of the Department of Correction and any subunit or division of the Department of Correction as specified in N.C. Gen. Stat. Chapter 143B, Article 6 and as specified elsewhere in the laws of this State are transferred to the Department of Public Safety. All references in the General Statutes or laws of the State to the "Department of Correction" are hereby deleted and replaced with the "Department of Public Safety Division of Corrections." All references in the General Statutes or laws of the State to the "Secretary of Correction" are hereby deleted and replaced with the "Secretary of Public Safety or the Secretary's designee." The Secretary of Public Safety shall designate a Commissioner of Corrections who shall be exempt from the State Personnel Act under N.C. Gen. Stat. § 126-5(c1) and who shall oversee those functions formerly housed in the Department of Correction, as assigned by the Secretary. This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Correction. Where the former Department of Correction or a division or other subunit of the former Department of Correction is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Public Safety. State employees currently employed by and under the supervision of the former Secretary of Correction and the former Department of Correction are hereby transferred to the supervision of the Secretary of Public Safety. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

b. The Department of Juvenile Justice and Delinquency Prevention, as established by N.C. Gen. Stat. § 143B-511, is hereby transferred to the Department of Public Safety by a Type I transfer. All powers, duties and functions of the Department of Juvenile Justice and Delinquency Prevention as specified in N.C. Gen. Stat. Chapter 143B, Article 12 and as specified elsewhere in the laws of this State are transferred to the Department of Public Safety. All references in the General Statutes or laws of the State to the "Department of Juvenile Justice and Delinquency Prevention" are hereby deleted and replaced with the "Department of Public Safety Division of Juvenile Justice and Delinquency Prevention." All references in the General Statutes or laws of the State to the "Secretary of Juvenile Justice and Delinquency Prevention" are hereby deleted and replaced with the "Secretary of Public Safety or the Secretary's designee." The Secretary of Public Safety shall designate a Commissioner of Juvenile Justice and Delinquency Prevention who shall be exempt from the

State Personnel Act under N.C. Gen. Stat. § 126-5(c1) and who shall oversee those functions formerly housed in the Department of Juvenile Justice and Delinquency Prevention, as assigned by the Secretary. Notwithstanding any other laws to the contrary, the legal custody and control of confidential juvenile records, as provided in N.C. Gen. Stat. Chapter 7B, shall belong to the Commissioner of Juvenile Justice and Delinquency Prevention, and the Commissioner shall exercise such control independent of the Secretary of Public Safety. This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Juvenile Justice and Delinquency Prevention. Where the former Department of Juvenile Justice and Delinquency Prevention or a division or other subunit of the former Department of Juvenile Justice and Delinquency Prevention is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Public Safety. State employees currently employed by and under the supervision of the former Secretary of Juvenile Justice and Delinquency Prevention and the former Department of Juvenile Justice and Delinquency Prevention are hereby transferred to the supervision of the Secretary of Public Safety. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

c. The Department of Crime Control and Public Safety, as established by N.C. Gen. Stat. § 143B-473, is hereby transferred to the Department of Public Safety by a Type I transfer. All powers, duties and functions of the Department of Crime Control and Public Safety as specified in N.C. Gen. Stat. Chapter 143B, Article 11 and as specified elsewhere in the laws of this State are transferred to the Department of Public Safety. All references in the General Statutes or laws of the State to the "Department of Crime Control and Public Safety" are hereby deleted and replaced with the "Department of Public Safety Division of Crime Control and Emergency Management." All references in the General Statutes or laws of the State to the "Secretary of Crime Control and Public Safety" are hereby deleted and replaced with the "Secretary of Public Safety or the Secretary's designee." The Secretary of Public Safety shall designate a Commissioner of Crime Control and Emergency Management who shall be exempt from the State Personnel Act under N.C. Gen. Stat. § 126-5(c1) and who shall oversee those functions formerly housed in the Department of Crime Control and Public Safety, as assigned by the Secretary. This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Crime Control and Public Safety. Where the former Department of Crime Control and Public Safety or a division or other subunit of the former Department of Crime Control and Public Safety is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Public Safety. State employees currently employed by and under the supervision of the former Secretary of Crime Control and Public Safety and the former Department of Crime Control and Public Safety are hereby transferred to the supervision of the Secretary of Public Safety. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

d. All commissions, boards, councils, committees or other similar entities established under or administratively housed in the former Department of Correction, the former Department of Juvenile Justice and Delinquency Prevention, or the former Department of Crime Control and Public Safety are hereby transferred to the Department of Public Safety. Such entities shall continue to exercise their authority and power as currently provided in the laws of the State.

e. The Codifier of Rules shall reorganize the North Carolina Administrative Code, including specifically Titles 5, 14A and 28, to reflect the organization of the Department of Public Safety and the elimination of the former Department of Correction, the former Department of Juvenile Justice and Delinquency Prevention, and the former Department of Crime Control and Public Safety. The Codifier of Rules shall make changes in the text of any affected rules to reflect changes in the organizational structure of the Department of Public Safety. The changes by the Codifier are exempt from the requirements of Chapter 150B of the General Statutes and do not require the review or approval of the Rules Review Commission.

f. Notwithstanding the provisions of N.C. Gen. Stat. § 126-5(d)(1), the Department of Public Safety may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in the department, not to exceed 90 positions in the department.

Section 6. Department of Commerce

a. The Unemployment Insurance Division of the Employment Security Commission, as established or operated pursuant to N.C. Gen. Stat. § 96-3(b) and N.C. Gen. Stat. Chapter 96, Article 2, is hereby transferred to the Department of Commerce by a Type I transfer. All powers, duties and functions related to the Unemployment Insurance Division as specified in N.C. Gen. Stat. Chapter 96 and as specified elsewhere in the laws of this State are transferred to the Department of Commerce. Provided, however, that the policymaking or adjudicative functions of the Employment Security Commission related to the Unemployment Insurance Division shall not be transferred to the Department of Commerce, but shall remain with the Employment Security Commission.

b. The Employment Service Division, the Labor Market Information Division, and all other divisions or subunits of the Employment Security Commission, established or operated pursuant to N.C. Gen. Stat. § 96-3(b) and N.C. Gen. Stat. Chapter 96, Articles 1, 3 and 4, except for the Office of Chief Counsel and all attorneys and support staff housed under that office, are hereby transferred to the Department of Commerce by a Type I transfer. All powers, duties and functions of these divisions as specified in N.C. Gen. Stat. Chapter 96 and as specified elsewhere in the laws of this State are transferred to the Department of Commerce. Such changes shall not be reflected in the General Statutes, except for those instances where the General Statutes specifically address a division or office that is modified by this Executive Order.

c. All references in the General Statutes and laws of the State to the "Employment Security Commission" regarding the aforementioned divisions and subunits are hereby deleted and replaced with the "Department of Commerce," except if such references address the policymaking or adjudicative duties of the Employment Security Commission. All references in the General Statutes and laws of the State to the "Chair of the Employment Security Commission" regarding the aforementioned divisions and subunits are hereby deleted and replaced with the "Secretary of Commerce or the Secretary's designee," except if such references address the policymaking or adjudicative duties of the Chair of the Employment Security Commission. State employees currently employed by and under the supervision of the Employment Security Commission, except those attorneys and support staff in the Office of Chief Counsel, are hereby transferred to the supervision of the Secretary of Commerce. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

d. The Employment Security Commission, as established by N.C. Gen. Stat. § 96-3, and the Office of Chief Counsel, including all attorneys and support staff housed under that office, are hereby transferred to the Department of Commerce by a Type II transfer with all the elements of a Type II transfer. Except as otherwise provided in Sections 6.a, 6.b, and 6.c of this Executive Order and except for those management functions that shall be performed under the direction and supervision of the Secretary of Commerce pursuant to N.C. Gen. Stat. § 143A-6, the Commission shall exercise all its prescribed statutory powers independently of the Secretary of Commerce.

e. This Executive Order shall not affect any contract, agreement or other obligation of the Employment Security Commission. In any contract, agreement or other obligation of the Unemployment Insurance Division, the Employment Service Division, the Labor Market Information Division or any other division or subunit of the Employment Security Commission, except the Office of Chief Counsel, any references to the Employment Security Commission are hereby deemed to apply to the Department of Commerce.

f. The Employment Security Commission shall review its regulations and shall make changes in the text of any regulations to reflect changes in the organizational structure of the Employment Security Commission as provided in this Executive Order.

Section 7. Department of Health and Human Services

I hereby direct the Secretary of Health and Human Services to consolidate and reorganize the divisions of the Department of Health and Human Services. Such changes shall not be reflected in the General Statutes, except for those instances where the General Statutes specifically address a division or office that is modified by the consolidation and reorganization.

a. The Division of Public Health and the Office of Rural Health and Community Care are hereby consolidated into the Division of Prevention, Access and Public Health Services. All references to the "Division of Public Health" or the "Office of Rural Health and Community Care" are hereby deleted and replaced with the "Division of Prevention, Access and Public Health Services." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Division of Public Health or the former office of Rural Health and Community Care. Where the former Division of Public Health or the former Office of Rural Health and Community Care is referred to by law or by a contract or other document, the reference is hereby deemed to apply to the Division of Prevention, Access and Public Health Services.

b. The Division of Vocational Rehabilitation, the Division of Services for the Blind, and the Division of Services for the Deaf and Hard of Hearing are hereby consolidated into the Division of Blind, Deaf/Hard of Hearing and Rehabilitation Services. All references to the "Division of Vocational Rehabilitation," the "Division of Services for the Blind," or the "Division of Services for the Deaf and Hard of Hearing" are hereby deleted and replaced with the "Division of Blind, Deaf/Hard of Hearing and Rehabilitation Services." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Division of Vocational Rehabilitation, the former Division of Services for the Blind, or the former Division of Services for the Deaf and Hard of Hearing. Where the former Division of Vocational Rehabilitation, the former Division of Services for the Blind, or the former Division of Services for the Deaf and Hard of Hearing is referred to by law or by a contract or other document, the reference is hereby deemed to apply to the Division of Blind, Deaf/Hard of Hearing and Rehabilitation Services.

c. The Office of Long-Term Care Services and Supports and the Office of Housing and Homelessness are hereby consolidated into the Division of Aging and Adult Services. All references to the "Office of Long-Term Care Services and Supports" or the "Office of Housing and Homelessness" are hereby deleted and replaced with the "Division of Aging and Adult Services." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Office of Long-Term Care Services and Supports or the former Office of Housing and Homelessness. Where the former Office of Long-Term Care Services and Supports or the former Office of Housing and Homelessness is referred to by law or by a contract or other document, the reference is hereby deemed to apply to the Division of Aging and Adult Services.

d. The Codifier of Rules shall reorganize the North Carolina Administrative Code, including specifically Title 10A, to reflect the reorganization of the Department of Health and Human Services. The Codifier of Rules shall make changes in the text of any affected rules to reflect changes in the organizational structure of the Department of Health and Human Services. The changes by the Codifier are exempt from the requirements of Chapter 150B of the General Statutes and do not require the review or approval of the Rules Review Commission.

Section 8. Department of Transportation

a. The North Carolina State Ports Authority, as established by N.C. Gen. Stat. § 143B-452, is hereby transferred from the Department of Commerce to the Department of Transportation by a Type II transfer. Except for those management functions that shall be performed under the direction and supervision of the Secretary of Transportation pursuant to N.C. Gen. Stat. § 143A-6, the Ports Authority shall exercise all its prescribed statutory powers independently of the Secretary of Transportation. All references in Chapter 143B, Article 10, Part 10 of the General Statutes to the "Department of Commerce" are hereby deleted and replaced with the "Department of Transportation." All references in Chapter 143B, Article 10, Part 10 of the General Statutes to the "Secretary of Commerce" are hereby deleted and replaced with the "Secretary of Transportation." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the North Carolina State Ports Authority. Where the Department of Commerce is referred to by law or by a contract or other document related to the North Carolina State Ports Authority, the reference is hereby deemed to apply to the Department of Transportation.

b. The State Transportation Logistics Coordinating Council is hereby established. The Council shall be located administratively within, and shall exercise its powers within existing resources of, the Department of Transportation. The Council shall consist of the Secretary of Transportation, who shall serve as Chair, the Executive Director of the North Carolina Global TransPark, the Chief Executive Director of the North Carolina State Ports Authority, the President of the North Carolina Railroad Company, and other persons as determined necessary by the Secretary. The Council shall identify areas for cooperation among the State's transportation logistics entities, including improving the State's transportation services, coordinating on projects to create or expand companies in North Carolina or to attract companies to the State, and sharing of personnel and resources to the maximum extent practicable.

Section 9. Authority of Secretaries of Departments

Nothing in this Executive Order is intended to limit the ability of the department secretaries to organize and manage their departments as authorized by law. To the extent that any function of a former entity requires the exercise of exclusive or independent authority, the Secretary of the new entity shall ensure that such exclusive or independent authority is maintained.

Section 10. Implementation Flexibility and Resolution of Conflicts

This Order initiates a comprehensive, extended process requiring careful and well-managed implementation, evaluation, and assessment of the affected State departments and agencies and the services they provide to citizens. If the Governor or the Governor's designee determines that additional reorganization, consolidation, or elimination of State agencies not set forth in this Order is needed, the Governor or the Governor's designee shall have the flexibility to make such changes to the consolidation and reorganization of State Government

that are beyond the scope of changes set forth in this Order, consistent with the Constitutional powers of the Governor.

Where a conflict or ambiguity arises regarding any transfer or action authorized by this Executive Order, the Governor or the Governor's designee shall resolve the matter, and the decision of the Governor or the Governor's designee shall be final.

Section 11. Effect

This Order will become effective and have the force of law unless specifically disapproved by either the House or Senate or specifically modified by joint resolution of the House and Senate prior to adjournment sine die.

Section 12. Distribution of Order

An original of this Executive Order will be delivered by hand on the day it is issued to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Clerk of the Senate, and the Clerk of the House of Representatives.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of March in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

H1191-SMSU-58(e1) v2

HOUSE RESOLUTION 1191

Sponsors:	Representative Cleveland (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.
Referred to:	Judiciary Subcommittee C.

May 30, 2012

A HOUSE RESOLUTION SPECIFICALLY DISAPPROVING EXECUTIVE ORDER NO. 85, ISSUED MARCH 25, 2011, UNDER PROVISIONS OF THE NORTH CAROLINA CONSTITUTION GRANTING EITHER HOUSE OF THE GENERAL ASSEMBLY TO DO SO, AS THE GENERAL ASSEMBLY HAS ACCOMPLISHED ADMINISTRATIVE REORGANIZATIONS BY LEGISLATION.

Whereas, Section 5(10) of Article III of the North Carolina Constitution states: "Administrative reorganization. The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly"; and

Whereas, on March 25, 2011, the Governor issued Executive Order No. 85, entitled "CONSOLIDATION AND REORGANIZATION OF EXECUTIVE BRANCH AGENCIES TO IMPROVE THE EFFICIENCY OF STATE GOVERNMENT," which recited that it was issued under Section 5(10) of Article III of the North Carolina Constitution; and

Whereas, the General Assembly has carefully considered the Executive Order; and

Whereas, by the following legislation among others, the General Assembly has dealt with the issues raised in the Executive Order: (i) S.L. 2011-145 "AN ACT TO SPUR THE CREATION OF PRIVATE SECTOR JOBS; REORGANIZE AND REFORM STATE GOVERNMENT; MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS AND INSTITUTIONS; AND TO ENACT BUDGET RELATED AMENDMENTS"; and (ii) S.L. 2011-401 "AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2A OF CHAPTER 150B OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF THE SECRETARY OF COMMERCE"; and

Whereas, a resolution of disapproval is necessary as unless it is adopted Executive Order No. 85 may become effective under its terms upon sine die adjournment of the 2011 Regular Session of the General Assembly; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. Executive Order No. 85, adopted March 25, 2011 is specifically disapproved under the authority given the House of Representatives by Section 5(10) of Article III of the North Carolina Constitution.

SECTION 2. The Enrolling Clerk shall cause this resolution to be published in the Appendices to the Session Laws for the 2011 Regular Session of the General Assembly.

SECTION 3. This resolution is effective upon adoption.

SENATE BILL 756:
Amend Bail Law/Pretrial Release Programs

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 5, 2012
Introduced by:	Sens. Clary, East, Jones	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition S756-CSTJ-26		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 756 would amend the State's bail laws with regard to pretrial release programs, amend house arrest and electronic monitoring as a condition of pretrial release, and provide that no State funds may be appropriated to or used for support of a pretrial release program.***

CURRENT LAW: Under G.S. 15A-533, a defendant charged with a noncapital offense must have conditions of pretrial release determined in accordance with G.S. 15A-534. The provisions of G.S. 15A-534 also apply to a defendant charged with a capital offense, if the judge in his or her discretion determines that release is warranted. Drug trafficking and street gang crimes are offenses that are subject to a rebuttable presumption that no condition of release will reasonably assure the appearance of the defendant and the safety of the community; the presumption applies if the offense was committed while the defendant was on pretrial release for another offense and not more than five years has passed since the defendant committed the same type of offense.

Under G.S. 15A-534, in determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- Release the defendant on a written promise to appear.
- Release the defendant upon execution of an unsecured appearance bond in an amount specified by the judicial official. (An unsecured appearance bond is a type of bail in which the accused make a written promise to appear in court, and to pay a specified sum of money if the accused fails to appear as required.)
- Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage, or by at least one solvent surety.
- House arrest with electronic monitoring.

In determining which conditions of pretrial release to impose, the judicial official must take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of the defendant's residence in the community; record of convictions; history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

BILL ANALYSIS: The PCS to Senate Bill 756 would amend the procedure for determining conditions of pretrial release. The PCS would require a secured appearance bond of at least $1,000 for a defendant placed on electronic monitoring/house arrest.

Under current law, a defendant may be released into the custody of a designated person or organization, and the "organization" may include a pretrial release program. The PCS would eliminate the option of

releasing a defendant into the custody of an "organization"; but it provides that if the court has required the execution of a secured appearance bond as a condition of pretrial release, the defendant may elect to be placed in a pretrial release program. The PCS would add a new statute pertaining to pretrial release programs, defined as "an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release." A defendant could be placed in a pretrial release program only if execution of a secured bond is a condition of pretrial release, and at least 48 hours have elapsed from the date and time on the defendant's release order. The judicial official would be required to include the basis for the court's determination concerning placement of the defendant in a pretrial release program. The provides that no State funds may be appropriated to or used for support of a pretrial release program.

EFFECTIVE DATE: The new statute pertaining to pretrial release programs would become effective July 1, 2012. The remainder of the act would become effective December 1, 2012, and apply to actions to determine pretrial release conditions on or after that date.

Wendy Graf Ray and Brenda Carter, staff attorneys, substantially contributed to this summary.

S756-SMTJ-68(CSTJ-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S756-CSTJ-26 [v.2]

6/5/2012 10:49:40 PM

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2) or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a

determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations,~~

~~in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 48 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 48-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

~~(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.~~

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or (3)~~(1) or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release

will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3),~~(1) or (3) and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition ~~(1), (2), or (3).~~(1) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in

custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 72 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 72-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

HOUSE BILL 1084

Short Title:	HOAs/Planned Community Act Amends.	(Public)
Sponsors:	Representatives Jordan, Justice, R. Moore, and Spear (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (4) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO PLANNED COMMUNITY ACT

SECTION 1. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47F-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the lot owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 2.(a) G.S. 47F-3-118(a) reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-118A. Financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the lot owners within 30 days after its completion.

(b) The board of directors shall provide for an annual independent financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 3. G.S. 47F-3-108(a) reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~officer, and any material matter for which a vote is to be taken."

SECTION 4.(a) G.S. 47F-3-110 is repealed.

SECTION 4.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, lot owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4) of the section, by a proxy pursuant to subsection (c) of the section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of lot owners, the following requirements apply:

(1) Lot owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of lot owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a lot is present, that owner is entitled to cast all the votes allocated to that lot. If more than one of the owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a) of this section, a lot owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a lot owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the lot owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a lot may be cast pursuant to a directed or undirected proxy duly executed by a lot owner.

(2) If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy.

(3) A lot owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the lot owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every lot owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percent of votes necessary to approve each matter other than election of directors.

c. Specify the time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which lot owners wishing to deliver information to all lot owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a lot owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of lot owners may vote, provided:

(1) The issue being voted on is of special interest solely to the members of the subgroup; and

(2) All except de minimis cost that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup."

SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-120.1. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute

resolution for disputes arising under this Chapter shall use only mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART II. AMENDMENTS TO CONDOMINIUM ACT

SECTION 6. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47C-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the unit owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 7.(a) G.S. 47C-3-118(a) reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 7.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-103A. Budgets; financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the unit owners within 30 days after its completion.

(b) The board of directors shall provide for an annual financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 8. G.S. 47C-3-108(a) reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~ officer, and any material matter for which a vote is to be taken."

SECTION 9.(a) G.S. 47C-3-110 is repealed.

SECTION 9.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4) of this section, by a proxy pursuant to subsection (c) of this section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of unit owners, all of the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percent of votes necessary to approve each matter other than election of directors.

c. Specify a time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units, (i) the provisions of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a unit owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of unit owners may vote provided:

(1) The issue being voted on is of special interest solely to members of the subgroup; and

(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the condominium or substantially affects living conditions of unit owners not included in the voting subgroup."

SECTION 10. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-120. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations, may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall only use mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART III. AMENDMENTS TO TAXATION OF PROPERTY OWNED BY ASSOCIATIONS

SECTION 11.(a) G.S. 105-277.8 reads as rewritten:

"**§ 105-277.8. Taxation of property of nonprofit homeowners' association.**

(a) ~~The~~ Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if:~~ if each of the following requirements is met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally;~~ equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association; and~~ association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of real property owned by a nonprofit homeowners association that (i) meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) is entirely contained within a taxing jurisdiction that is different from all taxable real property owned by any member of the association to which the rights to use and enjoy the association property is appurtenant shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code."

SECTION 11.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2012.

SECTION 12. Except as otherwise provided, this act becomes effective July 1, 2012.

1st mtg

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE Judiciary C

DATE: 6/6/12 Room: 415

*Name: Mary Catherine Starnes

County: Caldwell Co.

Sponsor: Rep. Edgar Starnes

*Name: Amelia Morgan

County: Caldwell

Sponsor: Edgar starnes

*Name: Marley Bush

County: Randolph

onsor: Dockham

*Name:

County:

Sponsor:

*Name:

County:

Sponsor:

House Sgt-At Arms:

1. Name: Young Rae
2. Name: Garlin Shepheard
3. Name:
4. Name:
5. Name:
6. Name:

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Mary Jennings	NCDPS
Kim Wilson	NCAJ
Tracy Little	NCDPS / Adult Correction
James French	NCDPS/ Adult Correction
Kenneth Lassiter	NCDPS / Adult Correction
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Jennifer Lang	GUEST
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Daniel Auburn	NCRMA
Daniel Baum	TSS

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Shipman	Clerk of Superior Court

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jay Joiner	Journalist
[illegible]	NCTIA & Others
Darrin Freeman	Wake CSC
Bryan Collins	Wake Public Defender
Rick Moore	City Kings Mtn
Melanie Sohn	DCR
JERRY COHEN	Bill Drafting
Larry G. Pittman	NC House
[illegible]	NCAT
[illegible]	DOJ
Susan Camilleri	DOA

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kim Madson	Buncombe Co. Pretrial Services
Chuck Johnson	NC Pretrial Services Assoc.
Bill Brooks	NCFPC
Margaret Brooks	
Alexandra Suarez	UNC Law student
Austin King	UNC LAW STUDENT
Kevin Delaney	UNC Law student
Virginia Wooten	UNC Law
JODI SCHUR	UNC LAW
Belma Ayanle	DHHS
Kris Hogan	DMHS

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Thomas Maher	IDS
Ashleigh Thornton	MWC
Zan Pope	Gov office
Henry Agnes	Ogden Prin
Ed Bedford	CAS

VISITOR REGISTRATION SHEET

Judiciary C — 6/6/12

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
A. P. CARLTON	APN 1501 Glenwood ON BEHALF ON SB26
B Moore	Conf of Clerks of SoCt
David Cook	Ass't of Clerks of Sup. Ct
Than Batts	NC Bakers Assoc
Diane Starling	Homeowner - Raleigh
Christine Wunsche	SOG- Daily Bulletin
Reggie Holley	LONGMIRE GROUP
Leanne Winner	NCSBA
Kari Hoomand	NCACC
[illegible]	[illegible]
[illegible]	BASF

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 6, 2012

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 6, 2012, at 2:34 p.m. in room 1425 of the Legislative Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, Saine, and Weiss.

Rep. Tim Moore presided and called the meeting to order.

The following bills were considered:

HR 1191, Resolution of Disapproval of Reorganization (Representative Cleveland, Primary Sponsor). Chair Moore recognized Representative Cleveland who stated he had conversations with the Governor's Office. Discussion. Chair Moore recognized Pryor Gibson (Governor's Office) to speak regarding the bill. Discussion. Representative Saine was recognized for a motion for a favorable report with recommendation that it be adopted. With the majority being in favor, the motion carried.

SB 756, Amend Bail Law/Pretrial Release Programs (Senators Clary, East, and Jones, Primary Sponsors). Chair Moore recognized Representative Hager to speak. Chair Moore recognized Representative Hackney to send forth an amendment. See attachment 1). Mark Black, Bail Agents Association, was recognized to speak. Discussion and debate. Voted called for adoption of the amendment. Division called and show of hands. 4 votes yes and 6 votes no. Amendment fails. Representative Hackney sends forth second amendment (see attachment 2). Mark Black, Bail Agents Association, was recognized to speak. Discussion and debate. No votes taken on the second amendment.

The meeting adjourned at 2:58 p.m.

Respectfully submitted,

Representative Tim Moore, Chair

Nancy Garriss, Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 6, 2012
Room 1425 LB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HR 1191	Resolution of Disapproval of Reorganization.	Representative Cleveland
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones

ADJOURNMENT

Amendment 1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-20 [v.3]

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

Date _____,2012

Representative Hackney

moves to amend the bill on page 4, lines 20-22, by deleting the sentence that begins on line 20 with the word "The" and ends on line 22.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2nd amendment 6-6-12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-22 [v.2]

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

Date _____,2012

Representative Hackney

moves to amend the bill on page 4, lines 17 and 22, by deleting "48" and substituting "24".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2012 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐ Committee Substitute for

HR 1191 A HOUSE RESOLUTION SPECIFICALLY DISAPPROVING EXECUTIVE ORDER NO. 85, ISSUED MARCH 25, 2011, UNDER PROVISIONS OF THE NORTH CAROLINA CONSTITUTION GRANTING EITHER HOUSE OF THE GENERAL ASSEMBLY TO DO SO, AS THE GENERAL ASSEMBLY HAS ACCOMPLISHED ADMINISTRATIVE REORGANIZATIONS BY LEGISLATION.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Hp. Leo Daughtry

☒ With recommendation that it be adopted.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

HOUSE RESOLUTION 1191

Sponsors:	Representative Cleveland (Primary Sponsor). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.
Referred to:	Judiciary Subcommittee C.

May 30, 2012

A HOUSE RESOLUTION SPECIFICALLY DISAPPROVING EXECUTIVE ORDER NO. 85, ISSUED MARCH 25, 2011, UNDER PROVISIONS OF THE NORTH CAROLINA CONSTITUTION GRANTING EITHER HOUSE OF THE GENERAL ASSEMBLY TO DO SO, AS THE GENERAL ASSEMBLY HAS ACCOMPLISHED ADMINISTRATIVE REORGANIZATIONS BY LEGISLATION.

Whereas, Section 5(10) of Article III of the North Carolina Constitution states: "Administrative reorganization. The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly"; and

Whereas, on March 25, 2011, the Governor issued Executive Order No. 85, entitled "CONSOLIDATION AND REORGANIZATION OF EXECUTIVE BRANCH AGENCIES TO IMPROVE THE EFFICIENCY OF STATE GOVERNMENT," which recited that it was issued under Section 5(10) of Article III of the North Carolina Constitution; and

Whereas, the General Assembly has carefully considered the Executive Order; and

Whereas, by the following legislation among others, the General Assembly has dealt with the issues raised in the Executive Order: (i) S.L. 2011-145 "AN ACT TO SPUR THE CREATION OF PRIVATE SECTOR JOBS; REORGANIZE AND REFORM STATE GOVERNMENT; MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS AND INSTITUTIONS; AND TO ENACT BUDGET RELATED AMENDMENTS"; and (ii) S.L. 2011-401 "AN ACT TO REFORM THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA BY CREATING THE DIVISION OF EMPLOYMENT SECURITY WITHIN THE DEPARTMENT OF COMMERCE, TRANSFERRING THE FUNCTIONS OF THE EMPLOYMENT SECURITY COMMISSION TO THAT DIVISION, MAKING THE DIVISION SUBJECT TO RULE MAKING UNDER ARTICLE 2A OF CHAPTER 150B OF THE GENERAL STATUTES, AND BY MAKING OTHER MODIFICATIONS AND CONFORMING CHANGES TO ALIGN THE EMPLOYMENT SECURITY FUNCTIONS OF STATE GOVERNMENT UNDER THE DIRECT LEADERSHIP OF THE SECRETARY OF COMMERCE"; and

Whereas, a resolution of disapproval is necessary as unless it is adopted Executive Order No. 85 may become effective under its terms upon sine die adjournment of the 2011 Regular Session of the General Assembly; Now, therefore,

Be it resolved by the House of Representatives:

SECTION 1. Executive Order No. 85, adopted March 25, 2011 is specifically disapproved under the authority given the House of Representatives by Section 5(10) of Article III of the North Carolina Constitution.

SECTION 2. The Enrolling Clerk shall cause this resolution to be published in the Appendices to the Session Laws for the 2011 Regular Session of the General Assembly.

SECTION 3. This resolution is effective upon adoption.

HOUSE SIMPLE RESOLUTION 1191: Resolution of Disapproval of Reorganization

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 6, 2012
Introduced by:	Rep. Cleveland	**Prepared by:**	Wendy Graf Ray
Analysis of:	First Edition		Committee Counsel

SUMMARY: ***House Resolution 1191 would disapprove Executive Order No. 85, which ordered the consolidation and reorganization of Executive Branch agencies, so that the Executive Order does not go into effect and become law upon adjournment sine die of the session pursuant to Section 5(10) of Article III of the North Carolina Constitution.***

CURRENT LAW: Section 5 of Article III of the North Carolina Constitution sets out the duties of the Governor. Subsection (10) authorizes the Governor to make changes in the allocation of offices and agencies of the State and in their functions, powers, and duties, as necessary for efficient administration. If the changes affect existing law, they must be set forth in executive orders, which then go into effect and become law upon adjournment sine die of the session in which they were submitted, unless specifically disapproved by either house of the General Assembly or specifically modified by both houses.

On March 25, 2011, the Governor issued Executive Order No. 85 (see text in its entirety below). The Order provides for the consolidation and reorganization of the Executive Branch and will go into effect upon adjournment sine die of this session, unless it is disapproved or modified. In the meantime, the General Assembly has passed legislation dealing with issues raised in the Order.

BILL ANALYSIS: House Resolution 1191 would specifically disapprove Executive Order No. 85 so that it would not go into effect and become law upon adjournment sine die of the session.

EFFECTIVE DATE: The resolution would be effective upon adoption.

BACKGROUND: The full text of Executive Order No. 85 is included below:

EXECUTIVE ORDER NO. 85

CONSOLIDATION AND REORGANIZATION OF EXECUTIVE BRANCH

AGENCIES TO IMPROVE THE EFFICIENCY OF STATE GOVERNMENT

WHEREAS, the North Carolina Constitution gives the Governor the power to submit to the General Assembly changes, elimination, consolidation and reorganization of the powers, duties and functions of the agencies and departments within the Executive Branch of State Government whenever the Governor determines that such action is in the best interest of the State; and

WHEREAS, a principal reason for exercising this power is to ensure that State government services are delivered in an effective and coordinated way; and

WHEREAS, the Governor has the responsibility to spend tax dollars wisely and efficiently; and

WHEREAS, I have determined that the State of North Carolina is in a time of economic challenge, such that the way State Government has operated must change in order to continue to deliver critical services to North Carolina citizens.

NOW, THEREFORE, pursuant to the powers conferred on me as Governor by Article III, Section 5(10) of the Constitution and the laws of North Carolina, as a first step in the process of reorganizing State Government, IT IS ORDERED:

The Executive Branch of State Government is hereby consolidated and reorganized as provided herein.

Section 1. Use of Terms

For purposes of this Executive Order, the terms "Type I Transfer" and "Type II Transfer" shall have the meaning prescribed by the General Assembly in the Executive Organization Act of 1971, N.C. Gen. Stat. § 143A-6, and the terms "Agency," "Board," "Commission," "Committee," "Council," "Division," "Head of Department," and "Principal State Department" shall have the meaning prescribed by the General Assembly in the Executive Organization Act of 1973, N.C. Gen. Stat. § 143B-3.

Section 2. Applicability to Departments and Agencies

This Executive Order is applicable to the following departments and agencies: the Department of Administration, the Department of Commerce, the Department of Correction, the Department of Crime Control and Public Safety, the Department of Cultural Resources, the Department of Environment and Natural Resources, the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, the Department of Revenue, the Department of Transportation, the Office of State Personnel, the Office of State Budget and Management, the Office of Information Technology Services, and the Employment Security Commission.

Section 3. Statutes Remain in Effect

Except as herein expressly modified, the provisions of Chapters 143, 143A and 143B of the North Carolina General Statutes remain in force.

Section 4. Department of Management and Administration

The Office of State Personnel and the Office of Information Technology Services are hereby consolidated into the Department of Administration. The Department of Administration, as established by N.C. Gen. Stat. § 143B-366, is hereby renamed the Department of Management and Administration. All powers, duties, functions and obligations heretofore vested in the former Department of Administration, and any subunit or

division of the former Department of Administration, are hereby vested in the Department of Management and Administration. All references in the General Statutes or laws of the State to the "Department of Administration" are hereby deleted and replaced with the "Department of Management and Administration." All references to the "Secretary of Administration" in the General Statutes or laws of the State are hereby deleted and replaced with the "Secretary of Management and Administration." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Administration. Where the former Department of Administration or a division or other subunit of the former Department of Administration is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Management and Administration.

a. The Office of State Personnel, as established by N.C. Gen. Stat. § 126-3, is transferred to the Department of Management and Administration by a Type I transfer. All powers, duties and functions of the Office of State Personnel as specified in N.C. Gen. Stat. Chapter 126 and as specified elsewhere in the laws of this State are transferred to the Department of Management and Administration. All powers and duties of the Office of State Personnel specifically enumerated in N.C. Gen. Stat. § 126-3 are added to those powers and duties of the Department of Management and Administration specified in N.C. Gen. Stat. § 143-341. All references in the General Statutes or laws of the State to the "Office of State Personnel" are hereby deleted and replaced with the "Department of Management and Administration." All references in the General Statutes or laws of the State to the "State Personnel Director" are hereby deleted and replaced with the "Secretary of Management and Administration or the Secretary's designee." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Office of State Personnel. Where the former Office of State Personnel or a division or other subunit of the former Office of State Personnel is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Management and Administration. State employees currently employed by and under the supervision of the former State Personnel Director and the former Office of State Personnel are hereby transferred to the supervision of the Secretary of Management and Administration. Additionally, to ensure the consistent application of human resource policies and practices, the human resource functions within the Cabinet State Agencies will be centralized within the Department of Management and Administration. All human resources positions, professional development/training positions, and safety officer positions, and all related administrative support positions and budgets, will be transferred to the supervision of the Secretary of Management and Administration. The Department of Management and Administration, in conjunction with the Office of State Budget and Management, will review such agency positions to determine which positions will be transferred to the Department of Management and Administration. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

b. The Office of Information Technology Services, as established by N.C. Gen. Stat. Chapter 147, Article 3D, is hereby transferred to the Department of Management and Administration by a Type I transfer. All powers,

duties and functions of the Office of Information Technology Services as specified in N.C. Gen. Stat. Chapter 147, Article 3D and as specified elsewhere in the laws of this State are transferred to the Department of Management and Administration. All powers and duties of the Office of Information Technology Services specifically enumerated in N.C. Gen. Stat. §§ 147-33.82 and 147-33.83 are added to those powers and duties of the Department of Management and Administration specified in N.C. Gen. Stat. § 143-341. All references in the General Statutes or laws of the State to the "Office of Information Technology" are hereby deleted and replaced with the "Department of Management and Administration." All references in the General Statutes or laws of the State to the "State Chief Information Officer" are hereby deleted and replaced with the "Secretary of Management and Administration or the Secretary's designee." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Office of Information Technology Services. Where the former Office of Information Technology Services or a division or other subunit of the former Office of Information Technology Services is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Management and Administration. State employees currently employed by and under the supervision of the former State Chief Information Officer and the former Office of Information Technology Services are hereby transferred to the supervision of the Secretary of Management and Administration. Additionally, all employees within the Cabinet State Agencies who serve in the position of or exercise the responsibility of Chief Information Officer are hereby transferred to the supervision of the Secretary of Management and Administration. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

c. All commissions, boards, councils, committees or other similar entities established under or administratively housed in the Office of State Personnel or the Office of Information Technology Services are hereby transferred to the Department of Management and Administration. Such entities shall continue to exercise their authority and power as currently provided in the laws of the State.

d. The Codifier of Rules shall reorganize the North Carolina Administrative Code, including specifically Titles 1, 9 and 25, to reflect the aforementioned consolidation of the former Department of Administration, the former Office of State Personnel, and the former Office of Information Technology Services into the Department of Management and Administration. The Codifier of Rules shall make changes in the text of any affected rules to reflect changes in the organizational structure of the Department of Management and Administration. The changes by the Codifier are exempt from the requirements of Chapter 150B of the General Statutes and do not require the review or approval of the Rules Review Commission.

Section 5. Department of Public Safety

There is hereby established and created a principal department to be known as the Department of Public Safety. Any reference in the General Statutes or laws of the State to the "principal departments" as enumerated in N.C. Gen. Stat. § 143B-6 or to "cabinet agencies" or "cabinet departments" is hereby deemed

to include the Department of Public Safety. The Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Crime Control and Public Safety are hereby consolidated into the Department of Public Safety. The Department of Public Safety shall be headed by the Secretary of Public Safety, who shall be appointed by and serve at the pleasure of the Governor. The Department of Public Safety shall include, but not be limited to, the following three divisions: the Division of Corrections, the Division of Juvenile Justice and Delinquency Prevention, and the Division of Crime Control and Emergency Management.

a. The Department of Correction, as established in N.C. Gen. Stat. § 143B-260, is hereby transferred to the Department of Public Safety by a Type I transfer. All powers, duties and functions of the Department of Correction and any subunit or division of the Department of Correction as specified in N.C. Gen. Stat. Chapter 143B, Article 6 and as specified elsewhere in the laws of this State are transferred to the Department of Public Safety. All references in the General Statutes or laws of the State to the "Department of Correction" are hereby deleted and replaced with the "Department of Public Safety Division of Corrections." All references in the General Statutes or laws of the State to the "Secretary of Correction" are hereby deleted and replaced with the "Secretary of Public Safety or the Secretary's designee." The Secretary of Public Safety shall designate a Commissioner of Corrections who shall be exempt from the State Personnel Act under N.C. Gen. Stat. § 126-5(c1) and who shall oversee those functions formerly housed in the Department of Correction, as assigned by the Secretary. This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Correction. Where the former Department of Correction or a division or other subunit of the former Department of Correction is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Public Safety. State employees currently employed by and under the supervision of the former Secretary of Correction and the former Department of Correction are hereby transferred to the supervision of the Secretary of Public Safety. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

b. The Department of Juvenile Justice and Delinquency Prevention, as established by N.C. Gen. Stat. § 143B-511, is hereby transferred to the Department of Public Safety by a Type I transfer. All powers, duties and functions of the Department of Juvenile Justice and Delinquency Prevention as specified in N.C. Gen. Stat. Chapter 143B, Article 12 and as specified elsewhere in the laws of this State are transferred to the Department of Public Safety. All references in the General Statutes or laws of the State to the "Department of Juvenile Justice and Delinquency Prevention" are hereby deleted and replaced with the "Department of Public Safety Division of Juvenile Justice and Delinquency Prevention." All references in the General Statutes or laws of the State to the "Secretary of Juvenile Justice and Delinquency Prevention" are hereby deleted and replaced with the "Secretary of Public Safety or the Secretary's designee." The Secretary of Public Safety shall designate a Commissioner of Juvenile Justice and Delinquency Prevention who shall be exempt from the

State Personnel Act under N.C. Gen. Stat. § 126-5(c1) and who shall oversee those functions formerly housed in the Department of Juvenile Justice and Delinquency Prevention, as assigned by the Secretary. Notwithstanding any other laws to the contrary, the legal custody and control of confidential juvenile records, as provided in N.C. Gen. Stat. Chapter 7B, shall belong to the Commissioner of Juvenile Justice and Delinquency Prevention, and the Commissioner shall exercise such control independent of the Secretary of Public Safety. This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Juvenile Justice and Delinquency Prevention. Where the former Department of Juvenile Justice and Delinquency Prevention or a division or other subunit of the former Department of Juvenile Justice and Delinquency Prevention is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Public Safety. State employees currently employed by and under the supervision of the former Secretary of Juvenile Justice and Delinquency Prevention and the former Department of Juvenile Justice and Delinquency Prevention are hereby transferred to the supervision of the Secretary of Public Safety. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

c. The Department of Crime Control and Public Safety, as established by N.C. Gen. Stat. § 143B-473, is hereby transferred to the Department of Public Safety by a Type I transfer. All powers, duties and functions of the Department of Crime Control and Public Safety as specified in N.C. Gen. Stat. Chapter 143B, Article 11 and as specified elsewhere in the laws of this State are transferred to the Department of Public Safety. All references in the General Statutes or laws of the State to the "Department of Crime Control and Public Safety" are hereby deleted and replaced with the "Department of Public Safety Division of Crime Control and Emergency Management." All references in the General Statutes or laws of the State to the "Secretary of Crime Control and Public Safety" are hereby deleted and replaced with the "Secretary of Public Safety or the Secretary's designee." The Secretary of Public Safety shall designate a Commissioner of Crime Control and Emergency Management who shall be exempt from the State Personnel Act under N.C. Gen. Stat. § 126-5(c1) and who shall oversee those functions formerly housed in the Department of Crime Control and Public Safety, as assigned by the Secretary. This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Department of Crime Control and Public Safety. Where the former Department of Crime Control and Public Safety or a division or other subunit of the former Department of Crime Control and Public Safety is referred to by law or by a contract or other document, that reference is hereby deemed to apply to the Department of Public Safety. State employees currently employed by and under the supervision of the former Secretary of Crime Control and Public Safety and the former Department of Crime Control and Public Safety are hereby transferred to the supervision of the Secretary of Public Safety. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

d. All commissions, boards, councils, committees or other similar entities established under or administratively housed in the former Department of Correction, the former Department of Juvenile Justice and Delinquency Prevention, or the former Department of Crime Control and Public Safety are hereby transferred to the Department of Public Safety. Such entities shall continue to exercise their authority and power as currently provided in the laws of the State.

e. The Codifier of Rules shall reorganize the North Carolina Administrative Code, including specifically Titles 5, 14A and 28, to reflect the organization of the Department of Public Safety and the elimination of the former Department of Correction, the former Department of Juvenile Justice and Delinquency Prevention, and the former Department of Crime Control and Public Safety. The Codifier of Rules shall make changes in the text of any affected rules to reflect changes in the organizational structure of the Department of Public Safety. The changes by the Codifier are exempt from the requirements of Chapter 150B of the General Statutes and do not require the review or approval of the Rules Review Commission.

f. Notwithstanding the provisions of N.C. Gen. Stat. § 126-5(d)(1), the Department of Public Safety may designate exempt managerial positions in a number up to one percent (1%) of the total number of full-time positions in the department, not to exceed 90 positions in the department.

Section 6. Department of Commerce

a. The Unemployment Insurance Division of the Employment Security Commission, as established or operated pursuant to N.C. Gen. Stat. § 96-3(b) and N.C. Gen. Stat. Chapter 96, Article 2, is hereby transferred to the Department of Commerce by a Type I transfer. All powers, duties and functions related to the Unemployment Insurance Division as specified in N.C. Gen. Stat. Chapter 96 and as specified elsewhere in the laws of this State are transferred to the Department of Commerce. Provided, however, that the policymaking or adjudicative functions of the Employment Security Commission related to the Unemployment Insurance Division shall not be transferred to the Department of Commerce, but shall remain with the Employment Security Commission.

b. The Employment Service Division, the Labor Market Information Division, and all other divisions or subunits of the Employment Security Commission, established or operated pursuant to N.C. Gen. Stat. § 96-3(b) and N.C. Gen. Stat. Chapter 96, Articles 1, 3 and 4, except for the Office of Chief Counsel and all attorneys and support staff housed under that office, are hereby transferred to the Department of Commerce by a Type I transfer. All powers, duties and functions of these divisions as specified in N.C. Gen. Stat. Chapter 96 and as specified elsewhere in the laws of this State are transferred to the Department of Commerce. Such changes shall not be reflected in the General Statutes, except for those instances where the General Statutes specifically address a division or office that is modified by this Executive Order.

c. All references in the General Statutes and laws of the State to the "Employment Security Commission" regarding the aforementioned divisions and subunits are hereby deleted and replaced with the "Department of Commerce," except if such references address the policymaking or adjudicative duties of the Employment Security Commission. All references in the General Statutes and laws of the State to the "Chair of the Employment Security Commission" regarding the aforementioned divisions and subunits are hereby deleted and replaced with the "Secretary of Commerce or the Secretary's designee," except if such references address the policymaking or adjudicative duties of the Chair of the Employment Security Commission. State employees currently employed by and under the supervision of the Employment Security Commission, except those attorneys and support staff in the Office of Chief Counsel, are hereby transferred to the supervision of the Secretary of Commerce. Transfers of positions pursuant to this Order shall not affect any individual employee's current compensation or benefits.

d. The Employment Security Commission, as established by N.C. Gen. Stat. § 96-3, and the Office of Chief Counsel, including all attorneys and support staff housed under that office, are hereby transferred to the Department of Commerce by a Type II transfer with all the elements of a Type II transfer. Except as otherwise provided in Sections 6.a, 6.b, and 6.c of this Executive Order and except for those management functions that shall be performed under the direction and supervision of the Secretary of Commerce pursuant to N.C. Gen. Stat. § 143A-6, the Commission shall exercise all its prescribed statutory powers independently of the Secretary of Commerce.

e. This Executive Order shall not affect any contract, agreement or other obligation of the Employment Security Commission. In any contract, agreement or other obligation of the Unemployment Insurance Division, the Employment Service Division, the Labor Market Information Division or any other division or subunit of the Employment Security Commission, except the Office of Chief Counsel, any references to the Employment Security Commission are hereby deemed to apply to the Department of Commerce.

f. The Employment Security Commission shall review its regulations and shall make changes in the text of any regulations to reflect changes in the organizational structure of the Employment Security Commission as provided in this Executive Order.

Section 7. Department of Health and Human Services

I hereby direct the Secretary of Health and Human Services to consolidate and reorganize the divisions of the Department of Health and Human Services. Such changes shall not be reflected in the General Statutes, except for those instances where the General Statutes specifically address a division or office that is modified by the consolidation and reorganization.

a. The Division of Public Health and the Office of Rural Health and Community Care are hereby consolidated into the Division of Prevention, Access and Public Health Services. All references to the "Division of Public Health" or the "Office of Rural Health and Community Care" are hereby deleted and replaced with the "Division of Prevention, Access and Public Health Services." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Division of Public Health or the former office of Rural Health and Community Care. Where the former Division of Public Health or the former Office of Rural Health and Community Care is referred to by law or by a contract or other document, the reference is hereby deemed to apply to the Division of Prevention, Access and Public Health Services.

b. The Division of Vocational Rehabilitation, the Division of Services for the Blind, and the Division of Services for the Deaf and Hard of Hearing are hereby consolidated into the Division of Blind, Deaf/Hard of Hearing and Rehabilitation Services. All references to the "Division of Vocational Rehabilitation," the "Division of Services for the Blind," or the "Division of Services for the Deaf and Hard of Hearing" are hereby deleted and replaced with the "Division of Blind, Deaf/Hard of Hearing and Rehabilitation Services." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Division of Vocational Rehabilitation, the former Division of Services for the Blind, or the former Division of Services for the Deaf and Hard of Hearing. Where the former Division of Vocational Rehabilitation, the former Division of Services for the Blind, or the former Division of Services for the Deaf and Hard of Hearing is referred to by law or by a contract or other document, the reference is hereby deemed to apply to the Division of Blind, Deaf/Hard of Hearing and Rehabilitation Services.

c. The Office of Long-Term Care Services and Supports and the Office of Housing and Homelessness are hereby consolidated into the Division of Aging and Adult Services. All references to the "Office of Long-Term Care Services and Supports" or the "Office of Housing and Homelessness" are hereby deleted and replaced with the "Division of Aging and Adult Services." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the former Office of Long-Term Care Services and Supports or the former Office of Housing and Homelessness. Where the former Office of Long-Term Care Services and Supports or the former Office of Housing and Homelessness is referred to by law or by a contract or other document, the reference is hereby deemed to apply to the Division of Aging and Adult Services.

d. The Codifier of Rules shall reorganize the North Carolina Administrative Code, including specifically Title 10A, to reflect the reorganization of the Department of Health and Human Services. The Codifier of Rules shall make changes in the text of any affected rules to reflect changes in the organizational structure of the Department of Health and Human Services. The changes by the Codifier are exempt from the requirements of Chapter 150B of the General Statutes and do not require the review or approval of the Rules Review Commission.

Section 8. Department of Transportation

a. The North Carolina State Ports Authority, as established by N.C. Gen. Stat. § 143B-452, is hereby transferred from the Department of Commerce to the Department of Transportation by a Type II transfer. Except for those management functions that shall be performed under the direction and supervision of the Secretary of Transportation pursuant to N.C. Gen. Stat. § 143A-6, the Ports Authority shall exercise all its prescribed statutory powers independently of the Secretary of Transportation. All references in Chapter 143B, Article 10, Part 10 of the General Statutes to the "Department of Commerce" are hereby deleted and replaced with the "Department of Transportation." All references in Chapter 143B, Article 10, Part 10 of the General Statutes to the "Secretary of Commerce" are hereby deleted and replaced with the "Secretary of Transportation." This Executive Order shall not affect any contract, agreement or other obligation of or obligation owed to the North Carolina State Ports Authority. Where the Department of Commerce is referred to by law or by a contract or other document related to the North Carolina State Ports Authority, the reference is hereby deemed to apply to the Department of Transportation.

b. The State Transportation Logistics Coordinating Council is hereby established. The Council shall be located administratively within, and shall exercise its powers within existing resources of, the Department of Transportation. The Council shall consist of the Secretary of Transportation, who shall serve as Chair, the Executive Director of the North Carolina Global TransPark, the Chief Executive Director of the North Carolina State Ports Authority, the President of the North Carolina Railroad Company, and other persons as determined necessary by the Secretary. The Council shall identify areas for cooperation among the State's transportation logistics entities, including improving the State's transportation services, coordinating on projects to create or expand companies in North Carolina or to attract companies to the State, and sharing of personnel and resources to the maximum extent practicable.

Section 9. Authority of Secretaries of Departments

Nothing in this Executive Order is intended to limit the ability of the department secretaries to organize and manage their departments as authorized by law. To the extent that any function of a former entity requires the exercise of exclusive or independent authority, the Secretary of the new entity shall ensure that such exclusive or independent authority is maintained.

Section 10. Implementation Flexibility and Resolution of Conflicts

This Order initiates a comprehensive, extended process requiring careful and well-managed implementation, evaluation, and assessment of the affected State departments and agencies and the services they provide to citizens. If the Governor or the Governor's designee determines that additional reorganization, consolidation, or elimination of State agencies not set forth in this Order is needed, the Governor or the Governor's designee shall have the flexibility to make such changes to the consolidation and reorganization of State Government

that are beyond the scope of changes set forth in this Order, consistent with the Constitutional powers of the Governor.

Where a conflict or ambiguity arises regarding any transfer or action authorized by this Executive Order, the Governor or the Governor's designee shall resolve the matter, and the decision of the Governor or the Governor's designee shall be final.

Section 11. Effect

This Order will become effective and have the force of law unless specifically disapproved by either the House or Senate or specifically modified by joint resolution of the House and Senate prior to adjournment sine die.

Section 12. Distribution of Order

An original of this Executive Order will be delivered by hand on the day it is issued to the President of the Senate, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Clerk of the Senate, and the Clerk of the House of Representatives.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this twenty-fifth day of March in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.

H1191-SMSU-58(e1) v2

SENATE BILL 756:
Amend Bail Law/Pretrial Release Programs

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 5, 2012
Introduced by:	Sens. Clary, East, Jones	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition S756-CSTJ-26		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 756 would amend the State's bail laws with regard to pretrial release programs, amend house arrest and electronic monitoring as a condition of pretrial release, and provide that no State funds may be appropriated to or used for support of a pretrial release program.***

CURRENT LAW: Under G.S. 15A-533, a defendant charged with a noncapital offense must have conditions of pretrial release determined in accordance with G.S. 15A-534. The provisions of G.S. 15A-534 also apply to a defendant charged with a capital offense, if the judge in his or her discretion determines that release is warranted. Drug trafficking and street gang crimes are offenses that are subject to a rebuttable presumption that no condition of release will reasonably assure the appearance of the defendant and the safety of the community; the presumption applies if the offense was committed while the defendant was on pretrial release for another offense and not more than five years has passed since the defendant committed the same type of offense.

Under G.S. 15A-534, in determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- Release the defendant on a written promise to appear.
- Release the defendant upon execution of an unsecured appearance bond in an amount specified by the judicial official. (An unsecured appearance bond is a type of bail in which the accused make a written promise to appear in court, and to pay a specified sum of money if the accused fails to appear as required.)
- Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage, or by at least one solvent surety.
- House arrest with electronic monitoring.

In determining which conditions of pretrial release to impose, the judicial official must take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of the defendant's residence in the community; record of convictions; history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

BILL ANALYSIS: The PCS to Senate Bill 756 would amend the procedure for determining conditions of pretrial release. The PCS would require a secured appearance bond of at least $1,000 for a defendant placed on electronic monitoring/house arrest.

Under current law, a defendant may be released into the custody of a designated person or organization, and the "organization" may include a pretrial release program. The PCS would eliminate the option of

releasing a defendant into the custody of an "organization"; but it provides that if the court has required the execution of a secured appearance bond as a condition of pretrial release, the defendant may elect to be placed in a pretrial release program. The PCS would add a new statute pertaining to pretrial release programs, defined as "an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release." A defendant could be placed in a pretrial release program only if execution of a secured bond is a condition of pretrial release, and at least 48 hours have elapsed from the date and time on the defendant's release order. The judicial official would be required to include the basis for the court's determination concerning placement of the defendant in a pretrial release program. The provides that no State funds may be appropriated to or used for support of a pretrial release program.

EFFECTIVE DATE: The new statute pertaining to pretrial release programs would become effective July 1, 2012. The remainder of the act would become effective December 1, 2012, and apply to actions to determine pretrial release conditions on or after that date.

Wendy Graf Ray and Brenda Carter, staff attorneys, substantially contributed to this summary.

S756-SMTJ-68(CSTJ-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S756-CSTJ-26 [v.2]

6/5/2012 10:49:40 PM

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2) or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a

determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations,~~

~~in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 48 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 48-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

~~(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.~~

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or (3)~~(1) or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release

will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3),~~(1) or (3) and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition ~~(1), (2), or (3).~~(1) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in

custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~ regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 72 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 72-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

House Committee Pages / Sergeants at Arms

AME OF COMMITTEE Judiciary C

DATE: 6/6/12 Room: 1425

*Name: Marley Bush
County: Randolph
Sponsor: Dockham
*Name: Mary Catherine Starnes
County: Caldwell Co.
Sponsor: Rep. Edgar Starnes
*Name:
County:
onsor:
*Name:
County:
Sponsor:
*Name:
County:
Sponsor:

House Sgt-At Arms:

1. Name: Young Bae
2. Name: Gavlin Shepheard
Name:
4. Name:
5. Name:
6. Name:

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mildred Spearman	NCAOC
David Cook	Cnt of Clerks of Sup Ct.
Barbara Moon	Cty of Cleveland Sp Bt
Annalise [illegible]	DKWC
Susanna Davis	Gov Office
Raya	Gov Office
Ashleigh Thornton	NWC
Ben Schwamberg	NCSBA
Mark Gianelli	NCSBA
Rick Moon	City K. M
David Bailey	City of Shelby

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C — June 6, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Black	NCBAA
Lao Rubert	CSR

1

VISITOR REGISTRATION SHEET

Judiciary C — 6/6/12

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Camilleri	NCDOA
Holly Safi	NC DOA
Joe Carpenter	Gaston Co. Comm.
Amy Bason	NCACC
Andrew Cagle	NC Sheriffs' Assn.
Belma Aparte	PHHS
Chuck Johnson	NCPSA
Kim Gordon	Brnc. Co. Pretrial Services
Mildred Hopkins	Delta Sigma Theta Sorority
MARCIA MOREY	Chief District Court Judge Durham
Thomasic McDonald	The News & Observer

VISITOR REGISTRATION SHEET

Judiciary C — 6/6/12

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MIKE MANN	NCBAA
Leann Winnie	NCSBA

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 13, 2012

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 13, 2012, at 10:05 a.m. in room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, Saine, and Weiss.

Rep. Tim Moore presided and called the meeting to order.

The following bills were considered:

SB 133, Juror Privacy, (Senator Clodfelter, Primary Sponsor). Chair Moore explained that SB 133 was being pulled from the agenda at the request of the primary sponsor, Senator Clodfelter, and said there is a rewrite that staff is working on. Chair Moore said Senator Clodfelter requested to move the bill to next week.

SB 756, Amend Bail Law/Pretrial Release Programs (Senators Clary, East, and Jones, Primary Sponsors). Chair Moore recognized Representative Hager to speak on the bill. Representative Hackney sent forth an amendment to change the effective date (Amendment 1). Discussion on the amendment. Representative Hackney withdraws his amendment. Representative Jones an offers amendment (Amendment 2). Vote called and amendment adopted. Representative Hackney submits amendment (Amendment 3) and explains the amendment. Discussion. Chair Moore recognizes public to speak: Brian Shipwash (Davidson County Clerk of Superior Court), Susan Burch (District Court Judge in Guilford County), Sgt. R. M. Abbott (Pitt County Sheriff's Office), Ken Miller (Chief, Greensboro Police Department). Discussion and debate. Vote was called on the amendment. Division was called: 5 yes votes and 6 no votes. The amendment fails. Representative Hackney submits amendment (Amendment 4). Brian Shipwash (Davidson County Clerk of Superior Court) and Judge Susan Burch (District Court in Guilford County) were recognized to speak from the public. Vote was called, and the amendment was adopted. Representative Hackney submits amendment (Amendment 5). Chair Moore recognizes staff, Jan Paul, to further explain the amendment. Discussion. Vote was called, and the amendment fails. Representative Hackney submits amendment (Amendment 6). Chair Moore recognized Captain Jim Marsal (Pitt County Sheriff's Office), Mark Black (NC Bail Agents Association), Chief Ken Miller (Greensboro Police Department), and Mike Mann (NC Bail Agents Association) from the public to speak on the amendment. Vote was called and division called: 8 yes votes, 3 no votes. The amendment was adopted. Representative Jones was recognized to put forth an amendment (Amendment 7). The vote was called, and the amendment was adopted. Discussion and debate continued on the bill. Representative Hackney made a motion for the bill to be referred without prejudice and re-referred to Appropriations. Discussion. Chair Moore called for vote on the motion and division called: 5 yes votes and 6 no votes. The motion fails. Representative Jordan is recognized by Chair Moore for a motion for a favorable report to the House Proposed Committee Substitute as amended, which changes the title, and unfavorable to the original bill. Vote called, and with the majority being in favor, the motion carried.

HB1084, HOAs/Planned Community Act Amends (Representatives Jordan, Justice, R. Moore, and Spear, Primary Sponsors). Chair Moore recognizes Representative Justice to explain the bill. Representative Mobley is recognized for a motion to place the Proposed Committee Substitute before the committee. Representative Cleveland presides and recognizes Jan Paul, staff, to explain the hot topics. Also, Representative Jordan spoke on the bill. Discussion. Representative Jordan submits an amendment

(Amendment 1A). Representative Pittman is recognized to speak on the amendment. Discussion. Representative Cleveland recognizes Representative Hackney who asks if there can be a word change from shall to may. Vote called and the amendment is adopted. Representative Moore is recognized by Representative Cleveland for a motion for the amendments to be rolled into the Proposed Committee Substitute, which changes the title, and unfavorable as to the original bill. With the majority being in favor, the motion carried.

Chair Moore adjourned the meeting at 11:15 a.m.

Respectfully submitted:

Representative Tim Moore, Chair

Nancy Garriss, Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 13, 2012
Room 415 LOB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 1084	HOAs/Planned Community Act Amends.	Representative Jordan Representative Justice Representative Moore Representative Spear
SB 133	Juror Privacy.	Senator Clodfelter
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 13, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 1084	HOAs/Planned Community Act Amends.	Representative Jordan Representative Justice Representative Moore Representative Spear
SB 133	Juror Privacy.	Senator Clodfelter
SB 756	Amend Bail Law/Pretrial Release Programs.	Senator Clary Senator East Senator Jones

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **June 12, 2011**.

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

amendment 1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 756 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) Hackney
Sen.)

1 moves to amend the bill on page 4, line 34
2 ( ) WHICH CHANGES THE TITLE
3 by deleting "2011," and substituting
4 "2013".
5
6
7
8
9
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11
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14
15
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Amendment 2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 756 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE X

Rep.) Jones
)
Sen.)

moves to amend the bill on page 4, line 33

( ) WHICH CHANGES THE TITLE

by deleting "July 1, 2011." and substituting "December 1, 2012."; and

on page 4, line 33, by deleting "2011," and substituting "2012,"

SIGNED Bud Jones

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Amendment 3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-22 [v.2]

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

Date _____,2012

Representative Hackney

moves to amend the bill on page 4, lines 17 and 22, by deleting "48" and substituting "24".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

amendment 4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-21 [v.3]

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Date _____,2012

Representative Hackney

moves to amend the bill on page 4, line 18, by deleting the phrase, "date and time on the defendant's release order" and substituting the phrase, "time of the defendant's arrest".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Amendment 5

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-23 [v.2]

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

Date _____,2012

Representative Hackney

moves to amend the bill on page 4, lines 13 through 16, by deleting the lines; and

on page 4, line 12, by deleting "all of the following criteria are met:"; and

on page 4, line 17, by deleting "(2) The" and substituting "the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Amendment 6

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ATJ-24 [v.2]

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Date _____,2012

Representative Hackney

moves to amend the bill on page 1, lines 22 and 23, by deleting the phrase, "of at least one thousand dollars ($1,000)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Amendment 7

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 756

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

S756-ASU-22 [v.1]

Comm. Sub. [NO]
Amends Title [NO]
Second Edition

Date _____, 2012

Representative Jones

moves to amend the bill on page 2, line 20, and on page, 3, lines 17, 21, 27-28, and 41, by deleting the phrase "or her" wherever it appears.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Amendment 1A

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1084

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

H1084-ARI-58 [v.1]

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

Date _____,2012

Representative JORDAN

moves to amend the bill on page 1, lines 1 through 9, by rewriting those lines to read:

" A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) REQUIRE THAT NOTICE OF ASSOCIATION MEETINGS DESCRIBE THE GENERAL NATURE OF ANY MATERIAL MATTER FOR WHICH A VOTE IS TO BE TAKEN, AND VOID ACTIONS TAKEN AT MEETINGS HELD IN VIOLATION OF REQUIREMENTS OF THE PLANNED COMMUNITY ACT OR THE CONDOMINIUM ACT, AS APPLICABLE, OR AN ASSOCIATIONS DECLARATION OR BYLAWS; (4) AMEND VOTING PROVISIONS AS THEY APPLY TO USE OF PROXIES AND BALLOTS; (5) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; (6) TO REQUIRE AWARD OF ATTORNEYS FEE TO A PREVAILING PARTY IN DISPUTES BETWEEN HOMEOWNERS AND THEIR ASSOCIATIONS; AND (7) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS.";

and on page 2, lines 38 through 51, by rewriting those lines to read:

"**SECTION 3.** G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner.

The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~officer, and any material matter for which a vote is to be taken.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

(d) Actions taken at a meeting held in violation of the association's bylaws or any provision of this Chapter shall be null and void, and no members of the association shall be bound by any decision or ruling made in that meeting."";

and on page 6, lines 14 through 27, by rewriting those lines to read:

"**SECTION 8.** G.S. 47C-3-108(a) reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~ officer, and any material matter for which a vote is to be taken. (b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

(d) Actions taken at a meeting held in violation of the association's bylaws or any provision of this Chapter shall be null and void, and no members of the association shall be bound by any decision or ruling made in that meeting."";

and on page 5, line 4, by rewriting that line to read:

"**SECTION 5.1** G.S. 47F-3-120 reads as rewritten:
"**§ 47F-3-120. Declaration limits on attorneys' fees.**
Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court ~~may~~ shall award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the declaration."";

and on page 8, line 32, by rewriting that line to read:

"**SECTION 10.1** G.S. 47C-4-117 reads as rewritten:
"**§ 47C-4-117. Effect of violations on rights of action; attorney's fees.**
If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of person adversely affected by that failure has a claim for appropriate relief. The court ~~may~~ shall award reasonable attorney's fees to the prevailing party."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☒ Committee Substitute for
SB 756 A BILL TO BE ENTITLED AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Rep. Les Daughtry

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐Committee Substitute for
HB 1084 A BILL TO BE ENTITLED AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (4) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Rep. Leo Daughtry

☒With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S 1

SENATE BILL 133

Short Title:	Juror Privacy.	(Public)
Sponsors:	Senators Clodfelter; and Jones.	
Referred to:	Judiciary I.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE ADDRESS OF EACH QUALIFIED PERSON SELECTED FOR THE JURY LIST APPEAR ON THE LIST FILED WITH THE REGISTER OF DEEDS, IN ORDER TO ALLAY JUROR PRIVACY CONCERNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name ~~and address~~ of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

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

Minutes
6-13-12
JC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S756-PCS15245-TJ-26

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person ~~or organization~~agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2) or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a

determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by him, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations,~~

~~in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 48 hours has elapsed from the time of the defendant's arrest and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 48-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This act becomes effective December 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11
PROPOSED HOUSE COMMITTEE SUBSTITUTE S756-CSTJ-26 [v.2]

6/5/2012 10:49:40 PM

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition (1), (2), or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition (1), (2) or (3), and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured or unsecured bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition (1), (2) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a

determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations,~~

~~in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 48 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 48-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

SENATE BILL 756:
Amend Bail Law/Pretrial Release Programs

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 5, 2012
Introduced by:	Sens. Clary, East, Jones	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to Second Edition S756-CSTJ-26		

SUMMARY: ***The Proposed Committee Substitute to Senate Bill 756 would amend the State's bail laws with regard to pretrial release programs, amend house arrest and electronic monitoring as a condition of pretrial release, and provide that no State funds may be appropriated to or used for support of a pretrial release program.***

CURRENT LAW: Under G.S. 15A-533, a defendant charged with a noncapital offense must have conditions of pretrial release determined in accordance with G.S. 15A-534. The provisions of G.S. 15A-534 also apply to a defendant charged with a capital offense, if the judge in his or her discretion determines that release is warranted. Drug trafficking and street gang crimes are offenses that are subject to a rebuttable presumption that no condition of release will reasonably assure the appearance of the defendant and the safety of the community; the presumption applies if the offense was committed while the defendant was on pretrial release for another offense and not more than five years has passed since the defendant committed the same type of offense.

Under G.S. 15A-534, in determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

- Release the defendant on a written promise to appear.
- Release the defendant upon execution of an unsecured appearance bond in an amount specified by the judicial official. (An unsecured appearance bond is a type of bail in which the accused make a written promise to appear in court, and to pay a specified sum of money if the accused fails to appear as required.)
- Place the defendant in the custody of a designated person or organization agreeing to supervise him.
- Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage, or by at least one solvent surety.
- House arrest with electronic monitoring.

In determining which conditions of pretrial release to impose, the judicial official must take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of the defendant's residence in the community; record of convictions; history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

BILL ANALYSIS: The PCS to Senate Bill 756 would amend the procedure for determining conditions of pretrial release. The PCS would require a secured appearance bond of at least $1,000 for a defendant placed on electronic monitoring/house arrest.

Under current law, a defendant may be released into the custody of a designated person or organization, and the "organization" may include a pretrial release program. The PCS would eliminate the option of

releasing a defendant into the custody of an "organization"; but it provides that if the court has required the execution of a secured appearance bond as a condition of pretrial release, the defendant may elect to be placed in a pretrial release program. The PCS would add a new statute pertaining to pretrial release programs, defined as "an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release." A defendant could be placed in a pretrial release program only if execution of a secured bond is a condition of pretrial release, and at least 48 hours have elapsed from the date and time on the defendant's release order. The judicial official would be required to include the basis for the court's determination concerning placement of the defendant in a pretrial release program. The provides that no State funds may be appropriated to or used for support of a pretrial release program.

EFFECTIVE DATE: The new statute pertaining to pretrial release programs would become effective July 1, 2012. The remainder of the act would become effective December 1, 2012, and apply to actions to determine pretrial release conditions on or after that date.

Wendy Graf Ray and Brenda Carter, staff attorneys, substantially contributed to this summary.

S756-SMTJ-68(CSTJ-26) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 756
Judiciary II Committee Substitute Adopted 6/7/11

Short Title: Amend Bail Law/Pretrial Release Programs. (Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE'S BAIL LAWS WITH REGARD TO PRETRIAL RELEASE PROGRAMS, TO ELIMINATE UNSECURED APPEARANCE BOND AS A PRETRIAL RELEASE CONDITION, TO AMEND HOUSE ARREST AND ELECTRONIC MONITORING AS A CONDITION OF PRETRIAL RELEASE, AND TO PROVIDE THAT NO STATE FUNDS MAY BE APPROPRIATED TO OR USED FOR THE SUPPORT OF A PRETRIAL RELEASE PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-534 reads as rewritten:

"**§ 15A-534. Procedure for determining conditions of pretrial release.**

(a) In determining conditions of pretrial release a judicial official must impose at least one of the following conditions:

(1) Release the defendant on his written promise to appear.

~~(2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by the judicial official.~~

(3) Place the defendant in the custody of a designated person ~~or organization~~ agreeing to supervise ~~him.~~the defendant.

(4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) ~~House arrest with electronic monitoring.~~Electronic monitoring that may also include house arrest.

If condition (5) is imposed, the defendant must execute a secured appearance bond of at least one thousand dollars ($1,000) under subdivision (4) of this subsection. If condition (3) is imposed, however, the defendant may elect to execute an appearance bond under subdivision (4). If condition (4) is imposed, the defendant may elect to be placed in a pretrial release program pursuant to G.S. 15A-534.7.

If the defendant is required to provide fingerprints pursuant to G.S. 15A-502(a1) or (a2), or a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the fingerprints or DNA sample have not yet been taken or (ii) the defendant has refused to provide the fingerprints or DNA sample, the judicial official shall make the collection of the fingerprints or DNA sample a condition of pretrial release. The judicial official may also place restrictions on the travel, associations, conduct, or place of abode of the defendant as conditions of pretrial release.

(b) The judicial official in granting pretrial release must impose condition ~~(1), (2), or (3)~~(1) or (3) in subsection (a) above unless ~~he~~ the judicial official determines that such release

will not reasonably assure the appearance of the defendant as required; will pose a danger of injury to any person; or is likely to result in destruction of evidence, subornation of perjury, or intimidation of potential witnesses. Upon making the determination, the judicial official must then impose condition (4) or (5) in subsection (a) above instead of condition ~~(1), (2), or (3),~~(1) or (3) and must record the reasons for so doing in writing to the extent provided in the policies or requirements issued by the senior resident superior court judge pursuant to G.S. 15A-535(a).

(c) In determining which conditions of release to impose, the judicial official must, on the basis of available information, take into account the nature and circumstances of the offense charged; the weight of the evidence against the defendant; the defendant's family ties, employment, financial resources, character, and mental condition; whether the defendant is intoxicated to such a degree that he would be endangered by being released without supervision; the length of his residence in the community; his record of convictions; his history of flight to avoid prosecution or failure to appear at court proceedings; and any other evidence relevant to the issue of pretrial release.

(d) The judicial official authorizing pretrial release under this section must issue an appropriate order containing a statement of the conditions imposed, if any; inform the defendant in writing of the penalties applicable to violations of the conditions of ~~his~~ the defendant's release; and advise ~~him~~ the defendant that his or her arrest will be ordered immediately upon any violation. The order of release must be filed with the clerk and a copy given the defendant.

(d1) When conditions of pretrial release are being imposed on a defendant who has failed on one or more prior occasions to appear to answer one or more of the charges to which the conditions apply, the judicial official shall at a minimum impose the conditions of pretrial release that are recommended in any order for the arrest of the defendant that was issued for the defendant's most recent failure to appear. If no conditions are recommended in that order for arrest, the judicial official shall require the execution of a secured appearance bond in an amount at least double the amount of the most recent previous secured ~~or unsecured~~ bond for the charges or, if no bond has yet been required for the charges, in the amount of at least five hundred dollars ($500.00). The judicial official shall also impose such restrictions on the travel, associations, conduct, or place of abode of the defendant as will assure that the defendant will not again fail to appear. The judicial official shall indicate on the release order that the defendant was arrested or surrendered after failing to appear as required under a prior release order. If the information available to the judicial official indicates that the defendant has failed on two or more prior occasions to appear to answer the charges, the judicial official shall indicate that fact on the release order.

(d2) When conditions of pretrial release are being determined for a defendant who is charged with a felony offense and the defendant is currently on probation for a prior offense, a judicial official shall determine whether the defendant poses a danger to the public prior to imposing conditions of pretrial release and must record that determination in writing. This subsection shall apply to any judicial official authorized to determine or review the defendant's eligibility for release under any proceeding authorized by this Chapter.

(1) If the judicial official determines that the defendant poses a danger to the public, the judicial official must impose condition (4) or (5) in subsection (a) of this section instead of condition ~~(1), (2), or (3).~~(1) or (3).

(2) If the judicial official finds that the defendant does not pose a danger to the public, then conditions of pretrial release shall be imposed as otherwise provided in this Article.

(3) If there is insufficient information to determine whether the defendant poses a danger to the public, then the defendant shall be retained in custody until a determination of pretrial release conditions is made pursuant to this subdivision. The judicial official that orders that the defendant be retained in

custody shall set forth, in writing, the following at the time that the order is entered:

a. The defendant is being held pursuant to this subdivision.

b. The basis for the judicial official's decision that additional information is needed to determine whether the defendant poses a danger to the public and the nature of the necessary information.

c. A date, within 96 hours of the time of arrest, when the defendant shall be brought before a judge for a first appearance pursuant to Article 29 of this Chapter. If the necessary information is provided to the court at any time prior to the first appearance, the first available judicial official shall set the conditions of pretrial release. The judge who reviews the defendant's eligibility for release at the first appearance shall determine the conditions of pretrial release as provided in this Article.

(e) A magistrate or a clerk may modify his or her pretrial release order at any time prior to the first appearance before the district court judge. At or after such first appearance, except when the conditions of pretrial release have been reviewed by the superior court pursuant to G.S. 15A-539, a district court judge may modify a pretrial release order of the magistrate or clerk or any pretrial release order entered by him or her at any time prior to:

(1) In a misdemeanor case tried in the district court, the noting of an appeal; and

(2) In a case in the original trial jurisdiction of the superior court, the binding of the defendant over to superior court after the holding, or waiver, of a probable-cause hearing.

After a case is before the superior court, a superior court judge may modify the pretrial release order of a magistrate, clerk, or district court judge, or any such order entered by ~~him,~~ him or her, at any time prior to the time set out in G.S. 15A-536(a).

(f) For good cause shown any judge may at any time revoke an order of pretrial release. Upon application of any defendant whose order of pretrial release has been revoked, the judge must set new conditions of pretrial release in accordance with this Article.

(g) In imposing conditions of pretrial release and in modifying and revoking orders of release under this section, the judicial official must take into account all evidence available to him which he considers reliable and is not strictly bound by the rules of evidence applicable to criminal trials.

(h) A bail bond posted pursuant to this section is effective and binding upon the obligor throughout all stages of the proceeding in the trial division of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or the entry of judgment in the superior court. The obligation of an obligor, however, is terminated at an earlier time if:

(1) A judge authorized to do so releases the obligor from his or her bond; or

(2) The principal is surrendered by a surety in accordance with G.S. 15A-540; or

(3) The proceeding is terminated by voluntary dismissal by the State before forfeiture is ordered under G.S. 15A-544.3; or

(4) Prayer for judgment has been continued indefinitely in the district court."

SECTION 2. G.S. 15A-535(b) reads as rewritten:

"(b) In any county in which there is a pretrial release program, the senior resident superior court judge may, after consultation with the chief district court judge, order that defendants accepted by such program for supervision shall, with their consent, be released by ~~judicial officials~~ judges to supervision of such ~~programs,~~ programs pursuant to G.S. 15A-534.7 and that defendants released to those programs shall be subject to ~~its~~ the rules and ~~regulations, in lieu of releasing the defendants on conditions (1), (2), or (3) of G.S. 15A-534(a).~~ regulations of the programs."

SECTION 3. Article 26 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-534.7. Pretrial release programs.**

(a) For purposes of this section, a pretrial release program is an organization designated by a judicial official that agrees to take custody of a defendant and supervise the defendant as a condition of pretrial release.

(b) A judicial official may place a defendant in the custody of a pretrial release program as a condition of pretrial release pursuant to this section. The condition may be imposed only under the same circumstances that the condition described in G.S. 15A-534(a)(3) may be imposed and only if all of the following criteria are met:

(1) The execution of a secured bond as described in G.S. 15A-534(a)(4) is a condition of pretrial release for the defendant at the time that placement with a pretrial release program is being considered as a pretrial release condition under this section.

(2) The judicial official finds as fact that a period of at least 72 hours has elapsed from the date and time on the defendant's release order and, pursuant to G.S. 15A-534(d1) and (d2), determines that the defendant is not a flight risk and does not pose a danger to the public. The pretrial release program shall not contact or otherwise attempt to gain access to the defendant prior to expiration of the 72-hour period.

(c) In addition to the criteria in subsection (b) of this section, the factors to be considered in determining whether placement of a defendant with a pretrial release program is an appropriate condition of pretrial release shall be the same as those in G.S. 15A-534. Except as otherwise provided by this section, the procedure for imposing that condition and authorizing pretrial release under this section shall be the same as those in G.S. 15A-534. In any order imposing a pretrial release condition pursuant to this section, the judicial official shall include the basis for the court's determination.

(d) No State government funds shall be appropriated to or used for the support of a pretrial release program or its activities."

SECTION 4. This section is effective when it becomes law. G.S. 15A-534.7(d), as enacted by Section 3 of this act, becomes effective July 1, 2011. The remainder of this act becomes effective December 1, 2011, and applies to criminal actions to determine pretrial release conditions on or after that date.

Minutes
6.12.12
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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 1084
PROPOSED COMMITTEE SUBSTITUTE H1084-PCS80391-TJ-25

Short Title: HOAs/Planned Community Act Amends. (Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) REQUIRE THAT NOTICE OF ASSOCIATION MEETINGS DESCRIBE THE GENERAL NATURE OF ANY MATERIAL MATTER FOR WHICH A VOTE IS TO BE TAKEN, AND VOID ACTIONS TAKEN AT MEETINGS HELD IN VIOLATION OF REQUIREMENTS OF THE PLANNED COMMUNITY ACT OR THE CONDOMINIUM ACT, AS APPLICABLE, OR AN ASSOCIATIONS DECLARATION OR BYLAWS; (4) AMEND VOTING PROVISIONS AS THEY APPLY TO USE OF PROXIES AND BALLOTS; (5) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (6) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO PLANNED COMMUNITY ACT

SECTION 1. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47F-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the lot owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any

reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 2.(a) G.S. 47F-3-118(a) reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-118A. Financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the lot owners within 30 days after its completion.

(b) The board of directors shall provide for an annual independent financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 3. G.S. 47F-3-108 reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address

designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~officer, and any material matter for which a vote is to be taken.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide lot owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues or concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided in the bylaws, meetings of the association and the executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

(d) Actions taken at a meeting held in violation of the association's bylaws or any provision of this Chapter shall be null and void, and no members of the association shall be bound by any decision or ruling made in that meeting."

SECTION 4.(a) G.S. 47F-3-110 is repealed.

SECTION 4.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, lot owners may vote at a meeting in person, by absentee ballot pursuant to subdivision (4) of subsection (b) of this section, by a proxy pursuant to subsection (c) of the section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of lot owners, the following requirements apply:

(1) Lot owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of lot owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a lot is present, that owner is entitled to cast all the votes allocated to that lot. If more than one of the owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a) of this section, a lot owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a lot owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the lot owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a lot may be cast pursuant to a directed or undirected proxy duly executed by a lot owner.

(2) If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy.

(3) A lot owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the lot owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every lot owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percentage of votes necessary to approve each matter other than election of directors.

c. Specify the time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which lot owners wishing to deliver information to all lot owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a lot owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of lot owners may vote, provided both of the following apply:

(1) The issue being voted on is of special interest solely to the members of the subgroup.

(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup."

SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-120.1. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall use only mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART II. AMENDMENTS TO CONDOMINIUM ACT

SECTION 6. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47C-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the unit owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 7.(a) G.S. 47C-3-118(a) reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of

meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 7.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-103A. Financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the unit owners within 30 days after its completion.

(b) The board of directors shall provide for an annual financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 8. G.S. 47C-3-108 reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~ officer, and any material matter for which a vote is to be taken.

(b) Meetings of the executive board shall be held as provided in the bylaws. At regular intervals, the executive board meeting shall provide unit owners an opportunity to attend a portion of an executive board meeting and to speak to the executive board about their issues and concerns. The executive board may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

(c) Except as otherwise provided for in the bylaws, meetings of the association and executive board shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.

(d) Actions taken at a meeting held in violation of the association's bylaws or any provision of this Chapter shall be null and void, and no members of the association shall be bound by any decision or ruling made in that meeting."

SECTION 9.(a) G.S. 47C-3-110 is repealed.

SECTION 9.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subdivision (4) of subsection (b) of this section, by a proxy pursuant to subsection (c) of this section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of unit owners, all of the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a) of this section, a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.
(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).
(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:
(1) The association shall notify the unit owners that the vote will be taken by ballot.
(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.
(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.
(4) When the association delivers the ballots, the association shall do all of the following:
a. Indicate the number of responses needed to meet the quorum requirements.
b. State the percentage of votes necessary to approve each matter other than election of directors.
c. Specify a time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.
d. Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.
(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.
(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units, (i) the provisions of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a unit owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of unit owners may vote, provided both of the following apply:
(1) The issue being voted on is of special interest solely to members of the subgroup.
(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the condominium or substantially affects living conditions of unit owners not included in the voting subgroup."

SECTION 10. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"§ 47C-3-120. Alternative dispute resolution allowed.

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall only use mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART III. AMENDMENTS TO TAXATION OF PROPERTY OWNED BY ASSOCIATIONS

SECTION 11.(a) G.S. 105-277.8 reads as rewritten:

"§ 105-277.8. Taxation of property of nonprofit homeowners' association.

(a) ~~The~~ Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if:~~ if each of the following requirements is met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally;~~ equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association; and~~ association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of real property owned by a nonprofit homeowners association that (i) meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) is entirely contained within a taxing jurisdiction that is different from all taxable real property owned by any member of the association to which the rights to use and enjoy the association property is appurtenant shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code."

SECTION 11.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2012.

PART IV. EFFECTIVE DATE

SECTION 12. Except as otherwise provided, this act becomes effective July 1, 2012.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H D

HOUSE BILL 1084
PROPOSED COMMITTEE SUBSTITUTE H1084-CSTJ-25 [v.1]

6/5/2012 7:08:45 PM

Short Title: HOAs/Planned Community Act Amends. (Public)

Sponsors:

Referred to:

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) PROVIDE VOTING RIGHTS PROCEDURES; (4) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (5) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO PLANNED COMMUNITY ACT

SECTION 1. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47F-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the lot owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full

payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 2.(a) G.S. 47F-3-118(a) reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-118A. Financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the lot owners within 30 days after its completion.

(b) The board of directors shall provide for an annual independent financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 3. G.S. 47F-3-108(a) reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws,

any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~officer, and any material matter for which a vote is to be taken."

SECTION 4.(a) G.S. 47F-3-110 is repealed.

SECTION 4.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, lot owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4) of this section, by a proxy pursuant to subsection (c) of the section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of lot owners, the following requirements apply:

(1) Lot owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of lot owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a lot is present, that owner is entitled to cast all the votes allocated to that lot. If more than one of the owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a) of this section, a lot owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a lot owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the lot owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a lot may be cast pursuant to a directed or undirected proxy duly executed by a lot owner.

(2) If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy.

(3) A lot owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the lot owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every lot owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percentage of votes necessary to approve each matter other than election of directors.

c. Specify the time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which lot owners wishing to deliver information to all lot owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a lot owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of lot owners may vote, provided:

(1) The issue being voted on is of special interest solely to the members of the subgroup; and

(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup."

SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-120.1. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations may agree to resolve the dispute by any form of binding or nonbinding

alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall use only mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART II. AMENDMENTS TO CONDOMINIUM ACT

SECTION 6. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47C-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the unit owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 7.(a) G.S. 47C-3-118(a) reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 7.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"§ 47C-3-103A. Financial review or audit requirements.

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the unit owners within 30 days after its completion.

(b) The board of directors shall provide for an annual financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 8. G.S. 47C-3-108(a) reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~ officer, and any material matter for which a vote is to be taken."

SECTION 9.(a) G.S. 47C-3-110 is repealed.

SECTION 9.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4) of this section, by a proxy pursuant to subsection (c) of this section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of unit owners, all of the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a

majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percentage of votes necessary to approve each matter other than election of directors.

c. Specify a time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units, (i) the provisions of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a unit owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of unit owners may vote provided:

(1) The issue being voted on is of special interest solely to members of the subgroup; and

(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the condominium or substantially affects living conditions of unit owners not included in the voting subgroup."

SECTION 10. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-120. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations, may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall only use mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART III. AMENDMENTS TO TAXATION OF PROPERTY OWNED BY ASSOCIATIONS

SECTION 11.(a) G.S. 105-277.8 reads as rewritten:

"**§ 105-277.8. Taxation of property of nonprofit homeowners' association.**

(a) ~~The~~ Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if:~~if each of the following requirements is met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally;~~equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association; and~~association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of real property owned by a nonprofit homeowners association that (i) meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) is entirely contained within a taxing jurisdiction that is different from all taxable real property owned by any member of the association to which the rights to use and enjoy the association property is appurtenant shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code."

SECTION 11.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2012.

SECTION 12. Except as otherwise provided, this act becomes effective July 1, 2012.

HOUSE BILL 1084:
HOAs/Planned Community Act Amends

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 5, 2012
Introduced by:	Reps. Jordan, Justice, R. Moore, Spear	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition H1084-CSTJ-25		

SUMMARY: ***The Proposed Committee Substitute to House Bill 1084 would amend the Planned Community Act and Condominium Act by requiring associations to release liens upon full payment of the debt, requiring all associations to conduct an annual financial review or audit, specifying voting rights procedures, allowing use of alternative dispute resolution for conflicts arising under the Planned Community Act or Condominium Act, and simplifying the collection of property taxes due on property owned by certain nonprofit homeowners associations, as recommended by the House Select Committee on Homeowners Associations.***

BILL ANALYSIS:

Sections 1 and 6 create a new G.S. 47F-3-116.1 in the Planned Community Act (PCA) and a corresponding new G.S. 47C-3-116.1 in the Condominium Act (CA) to:

- require an association that has filed a claim of lien for unpaid assessments to acknowledge satisfaction of the claim of lien within 30 days after the association receives full payment or performance of the debt;
- make the association liable for actual but not punitive damages if it fails to acknowledge satisfaction of the debt as required; and
- makes the association liable for $1,000, reasonable attorneys' fees and court costs if the lot owner both notifies the association of full payment and demands an acknowledge of satisfaction with the clerk of superior court, and the association fails to acknowledge satisfaction with the clerk within 30 days of receipt of the lot owner's demand.

Sections 2(a) and 7(a) eliminate current provisions in the PCA and CA which permit a more extensive review or audit of the association's financial records upon a majority vote or the executive board or owners.

Sections 2(b) and 7(b) create new sections in the PCA and CA which require the board of directors to provide for an annual independent financial review of the association, or an audit in lieu of a review if the governing documents require an audit, the association has annual revenues or expenditures of at least $400,000, or upon a majority vote of the board or unit owners.

Sections 3 and 8 add a requirement that meeting notices include notice of "any material matter for which a vote is to be taken."

Sections 4(a) and 9(a) repeal the current sections pertaining to voting.

Sections 4(b) and 9(b) add new sections prescribing the specific procedures for voting at a meeting, whether by absentee ballot, by proxy, or without a meeting.

Sections 5 and 10 add sections allowing parties to resolve disputes through the use of alternative dispute resolution using certified mediators.

Sections 11.(a) and 11.(b) provide that the value of real and personal property owned by a nonprofit homeowners' association (HOA) must be included in the appraisals of property owned by members of the HOA and not be assessed against the HOA if:

- all property owned by the HOA is held for the use, benefit, and enjoyment of all members of the HOA equally;
- each member of the HOA has an irrevocable right to use and enjoy all the property owned by the HOA subject to the rules, regulations or bylaws of the HOA; and
- each irrevocable right to use and enjoy all the property owned by the HOA is appurtenant to taxable real property owned by a member of the HOA.

This section is effective for taxes imposed for taxable years beginning on or after July 1, 2012.

EFFECTIVE DATE: This act becomes effective July 1, 2012.

H1084-SMTJ-67(CSTJ-25) v1

HOUSE BILL 1084

Short Title:	HOAs/Planned Community Act Amends.	(Public)
Sponsors:	Representatives Jordan, Justice, R. Moore, and Spear (Primary Sponsors). For a complete list of Sponsors, see Bill Information on the NCGA Web Site.	
Referred to:	Judiciary Subcommittee C.	

May 24, 2012

A BILL TO BE ENTITLED

AN ACT TO (1) REQUIRE ASSOCIATIONS TO RELEASE LIENS UPON PAYMENT IN FULL; (2) REQUIRE ALL ASSOCIATIONS TO CONDUCT FINANCIAL REVIEWS OR FINANCIAL AUDITS; (3) ALLOW USE OF ALTERNATIVE DISPUTE RESOLUTION FOR CONFLICTS ARISING UNDER THE PLANNED COMMUNITY ACT OR CONDOMINIUM ACT; AND (4) SIMPLIFY THE COLLECTION OF PROPERTY TAXES THAT ARE DUE ON PROPERTY OWNED BY CERTAIN NONPROFIT HOMEOWNERS ASSOCIATIONS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON HOMEOWNERS ASSOCIATIONS.

The General Assembly of North Carolina enacts:

PART I. AMENDMENTS TO PLANNED COMMUNITY ACT

SECTION 1. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47F-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the lot owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 2.(a) G.S. 47F-3-118(a) reads as rewritten:

"**§ 47F-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this Chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any lot owner and the lot owner's authorized agents as required in the bylaws and Chapter 55A of the General Statutes. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the lot owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all lot owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 2.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-118A. Financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the lot owners within 30 days after its completion.

(b) The board of directors shall provide for an annual independent financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the lot owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 3. G.S. 47F-3-108(a) reads as rewritten:

"**§ 47F-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by lot owners having ten percent (10%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than 10 nor more than 60 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each lot or to any other mailing address designated in writing by the lot owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the lot owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~officer, and any material matter for which a vote is to be taken."

SECTION 4.(a) G.S. 47F-3-110 is repealed.

SECTION 4.(b) Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, lot owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4) of the section, by a proxy pursuant to subsection (c) of the section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of lot owners, the following requirements apply:

(1) Lot owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of lot owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a lot is present, that owner is entitled to cast all the votes allocated to that lot. If more than one of the owners are present, the votes allocated to that lot may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the lot without protest being made promptly to the person presiding over the meeting by any of the other owners of the lot.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a) of this section, a lot owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a lot owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the lot owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a lot may be cast pursuant to a directed or undirected proxy duly executed by a lot owner.

(2) If a lot is owned by more than one person, each owner of the lot may vote or register protest to the casting of votes by the other owners of the lot through a duly executed proxy.

(3) A lot owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the lot owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every lot owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percent of votes necessary to approve each matter other than election of directors.

c. Specify the time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which lot owners wishing to deliver information to all lot owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the planned community be cast by lessees rather than lot owners of leased lots, (i) the provisions of this section apply to lessees as if they were lot owners; (ii) lot owners who have leased their lots to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were lot owners. Lot owners shall also be given notice, in the manner provided in G.S. 47F-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a lot owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of lot owners may vote, provided:

(1) The issue being voted on is of special interest solely to the members of the subgroup; and

(2) All except de minimis cost that will be incurred based on the vote taken will be assessed solely against those lot owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not a special interest solely to a subgroup if it substantially affects the overall appearance of the planned community or substantially affects living conditions of lot owners not included in the voting subgroup."

SECTION 5. Article 3 of Chapter 47F of the General Statutes is amended by adding a new section to read:

"**§ 47F-3-120.1. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute

resolution for disputes arising under this Chapter shall use only mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART II. AMENDMENTS TO CONDOMINIUM ACT

SECTION 6. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-116.1. Associations with claim of lien to file notice of satisfaction with clerk of court upon full payment; liability for failure.**

(a) An association that has filed a claim of lien pursuant to G.S. 47C-3-116 shall acknowledge satisfaction of the claim of lien securing the debt within 30 days after the association receives full payment or performance of the debt, as provided in this section. The association shall file with the clerk of court a notice of satisfaction of lien signed by the association's agent or attorney, whereupon the clerk of superior court shall forthwith make upon the record of the claim of lien on real property an entry of acknowledgment of satisfaction.

(b) An association that fails to acknowledge satisfaction of a claim of lien pursuant to this section by the end of the period specified in subsection (a) of this section is liable to the unit owner for any actual damages caused by the failure, but not for punitive damages.

(c) An association that is required to acknowledge satisfaction of a claim of lien pursuant to this section and does not do so by the end of the period specified in subsection (a) of this section is also liable to the lot owner for one thousand dollars ($1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, both of the following occur:

(1) The lot owner gives the association a notification, by certified mail and first-class mail, that provides proof the association has received full payment, demanding that the association acknowledge satisfaction with the clerk of superior court.

(2) The association does not acknowledge satisfaction with the clerk of superior court within 30 days after the association's receipt of the notification from the lot owner."

SECTION 7.(a) G.S. 47C-3-118(a) reads as rewritten:

"**§ 47C-3-118. Association records.**

(a) The association shall keep financial records sufficiently detailed to enable the association to comply with this chapter. All financial and other records, including records of meetings of the association and executive board, shall be made reasonably available for examination by any unit owner and the unit owner's authorized agents as required by the bylaws and by Chapter 55A of the General Statutes if the association is a nonprofit corporation. If the bylaws do not specify particular records to be maintained, the association shall keep accurate records of all cash receipts and expenditures and all assets and liabilities. In addition to any specific information that is required by the bylaws to be assembled and reported to the unit owners at specified times, the association shall make an annual income and expense statement and balance sheet available to all unit owners at no charge and within 75 days after the close of the fiscal year to which the information relates. ~~Notwithstanding the bylaws, a more extensive compilation, review, or audit of the association's books and records for the current or immediately preceding fiscal year may be required by a vote of the majority of the executive board or by the affirmative vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose.~~"

SECTION 7.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-103A. Budgets; financial review or audit requirements.**

(a) Except as provided in subsection (b) of this section, the board of directors shall provide for an annual independent financial review of the association. The review shall be completed no later than 90 days after the end of the association's fiscal year and shall be made available upon request to the unit owners within 30 days after its completion.

(b) The board of directors shall provide for an annual financial audit of the association, in lieu of an annual independent financial review, if any of the following conditions are met:

(1) The declaration, bylaws, or other governing documents expressly require conduct of an annual financial audit.

(2) The association has annual revenues or expenditures of at least four hundred thousand dollars ($400,000).

(3) An audit is requested by a vote of a majority of the board or by a vote of a majority of the unit owners present and voting in person or by proxy at any annual meeting or any special meeting duly called for that purpose."

SECTION 8. G.S. 47C-3-108(a) reads as rewritten:

"**§ 47C-3-108. Meetings.**

(a) A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%) or any lower percentage specified in the bylaws of the votes in the association. Not less than 10 nor more than 50 days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, ~~and~~ any proposal to remove a director or ~~officer.~~ officer, and any material matter for which a vote is to be taken."

SECTION 9.(a) G.S. 47C-3-110 is repealed.

SECTION 9.(b) Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-110A. Voting; proxies; ballots.**

(a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4) of this section, by a proxy pursuant to subsection (c) of this section, or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d) of this section.

(b) At a meeting of unit owners, all of the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for accurately determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required for a particular matter to be voted on by this Chapter or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least seven days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated, if it purports to be revocable without notice, or if it is given in favor of a board member.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting.

(6) A proxy may be used to achieve the required quorum at a meeting.

(7) A proxy is valid only if the nature of the matter for which the vote is to be taken is stated in the notice as required by G.S. 47F-3-108(a).

(8) A person may not cast proxies representing more than fifteen percent (15%) of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. In that event, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, the association shall do all of the following:

a. Indicate the number of responses needed to meet the quorum requirements.

b. State the percent of votes necessary to approve each matter other than election of directors.

c. Specify a time and date, not fewer than seven days after the date the association delivers the ballot, by which a ballot must be delivered to the association to be counted.

d. Describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units, (i) the provisions of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in G.S. 47C-3-108, of all meetings at which lessees may be entitled to vote.

(f) No votes allocated to a unit owned by the association may be cast.

(g) The declaration may provide that, on specified issues, only a defined subgroup of unit owners may vote provided:

(1) The issue being voted on is of special interest solely to members of the subgroup; and

(2) All except de minimis costs that will be incurred based on the vote taken will be assessed solely against those unit owners entitled to vote.

(h) For purposes of subdivision (1) of subsection (g) of this section, an issue to be voted on is not of special interest solely to a subgroup if it substantially affects the overall appearance of the condominium or substantially affects living conditions of unit owners not included in the voting subgroup."

SECTION 10. Article 3 of Chapter 47C of the General Statutes is amended by adding a new section to read:

"**§ 47C-3-120. Alternative dispute resolution allowed.**

Parties to a dispute arising under this Chapter or an association's declaration, bylaws, or rules and regulations, may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, except that a declarant may agree with the association to do so only after the period of declarant control has expired. Parties electing to use alternative dispute resolution for disputes arising under this Chapter shall only use mediators certified by the Dispute Resolution Commission. An agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties."

PART III. AMENDMENTS TO TAXATION OF PROPERTY OWNED BY ASSOCIATIONS

SECTION 11.(a) G.S. 105-277.8 reads as rewritten:

"**§ 105-277.8. Taxation of property of nonprofit homeowners' association.**

(a) ~~The~~ Except as provided in subsection (a1) of this section, the value of real and personal property owned by a nonprofit homeowners' association shall be included in the appraisals of property owned by members of the association and shall not be assessed against the association ~~if:~~ if each of the following requirements is met:

(1) All property owned by the association is held for the use, benefit, and enjoyment of all members of the association ~~equally;~~ equally.

(2) Each member of the association has an irrevocable right to use and enjoy, on an equal basis, all property owned by the association, subject to any restrictions imposed by the instruments conveying the right or the rules, regulations, or bylaws of the ~~association; and~~ association.

(3) Each irrevocable right to use and enjoy all property owned by the association is appurtenant to taxable real property owned by a member of the association.

The assessor may allocate the value of the association's property among the property of the association's members on any fair and reasonable basis.

(a1) The value of real property owned by a nonprofit homeowners association that (i) meets the requirements of subdivisions (1) through (3) of subsection (a) of this section and (ii) is entirely contained within a taxing jurisdiction that is different from all taxable real property owned by any member of the association to which the rights to use and enjoy the association property is appurtenant shall be subject to taxation only in the jurisdiction in which it is entirely contained and only in the amount of the local tax of the jurisdiction in which it is entirely contained. The value of any property taxed pursuant to this subsection shall not be included in the appraisals of property owned by members of the association that are referenced in subsection (a) of this section or otherwise subject to taxation. The assessor for the jurisdiction that imposes a tax pursuant to this subsection shall provide notice of the property, the value, and any other information to the assessor of any other jurisdiction so that the real properties owned by the members of the association are not subject to taxation for that value.

(b) As used in this section, "nonprofit homeowners' association" means a homeowners' association as defined in § 528(c) of the Internal Revenue Code."

SECTION 11.(b) This section is effective for taxes imposed for taxable years beginning on or after July 1, 2012.

SECTION 12. Except as otherwise provided, this act becomes effective July 1, 2012.

House Committee Pages / Sergeants at Arms

AME OF COMMITTEE JUDICIARY C

DATE: 6-13-'12 **Room:** 415

*Name: Isabelle Tamburro

County: Wake

Sponsor: Weiss

*Name: Maaya Dev

County: Wake

Sponsor: Keever

*Name:

County:

nsor:

*Name:

County:

Sponsor:

*Name:

County:

Sponsor:

House Sgt-At Arms:

1. Name: Bill Bass
2. Name: Mark LaPanse
3. lame:
4. Name:
5. Name:
6. Name:

VISITOR REGISTRATION SHEET

F.C. Family Law

(Committee Name)

6-13-12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ben Davis	Brooks Pierce/NC Bankers
Rochelle Sparko	NC Justice Center
David Cook	Conf of Clerks of Sup Ct.
Barbara Moore	Conf. of Clerks of Sup. Ct
Rep. Larry G. Pittman	NC House
Cpt. Jim Marsal	Pitt County Sheriff's Office
Sgt R.M. Abbott	Pitt County Sheriff's Office
Reggie Harvey	Longmire Group
Leanne Winner	NCSBA
Kevin Leonard	NCACC
Rick Taylor	NCAOC
A.P. Carlton	BLAB
William Clark	B Lab
Scott Fletcher	BLAB
Dana Fenton	City of Charlotte
Mildred Spearman	NCAOC
Thomas McDonald	NCO

09-21-201

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C: Family Law — June 13, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Black	NCBAA
Lauren Whalen	NCCUL
Daniel Baum	Tharrington Smith
Greg Bethel	GSW.
Mike Mann	NCBAA
Chief Ken Miller	Greensboro Police Dept
Wheaton Casey	Court Services - Guilford
Susan R. Burch	District Court Judge - Guilford
Kim Gordon	Pretrial Services - Buncombe
Chuck Johnson	NCPSA
Melissa Seiler	NC Bail Agents Assoc.

VISITOR REGISTRATION SHEET

J. C. Family Law

(Committee Name)

6-13-12

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Shipwash	Davidson County Clerk of Superior Court
Phyllip Tyler	Bruce
[illegible]	N. C. W. & Assoc
Aaron Brown	Sen. Don Vaughan's Office

09-21-201

VISITOR REGISTRATION SHEET

Judiciary Subcommittee C: Family Law — June 13, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN LAWTON	CAI
Cameron Eni-	Gov. Offic
Christine Winsslee	SOG - Daily Bulletin
Carley Ruff	NCHC

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Thursday, June 14, 2012

The House Judiciary Subcommittee C (Family Law) met on Thursday, June 14, 2012, at 9:21 a.m. in room 1228 of the Legislative Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Insko, Jones, Jordan, Mobley, Saine, and Weiss.

Rep. Tim Moore presided and called the meeting to order.

The following bill was considered:

HB 199, Metal Theft Prevention Act of 2012, (Representative Rhyne, Primary Sponsor). Chair Moore recognized Senator Daniel to speak on the bill. Discussion. Brenda Carter, staff, responded to a question. Chair Moore recognized comments from the public on the bill: Herb Crenshaw (AT&T), Greg Brown (Raleigh Metals), Will Culpepper (Nucor Corporation), Andrew Cagle (NC Sheriffs Association), and Jay Rouse (NC Association of Electric Cooperatives). Discussion. Representative Jones was recognized by Chair Moore for a motion with recommendation that the House concur.

The meeting adjourned at 9:55 a.m.

Respectfully submitted,

Representative Tim Moore, Chair

Nancy Garriss, Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 14, 2012
Room 1228/1327 LB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
HB 199	Metal Theft Prevention Act of 2012.	Representative Rhyne, Jr.

ADJOURNMENT

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Thursday, June 14, 2012
TIME: 9:30 am
LOCATION: 1228/1327 LB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
HB 199	Metal Theft Prevention Act of 2012.	Representative Rhyne, Jr.

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **4 PM** o'clock on **June 13, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

2012 PERMANENT SUBCOMMITTEE REPORT
HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE
The following report(s) from permanent sub committee(s) is/are presented:
By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

X Senate Committee Substitute for
HB 199 A BILL TO BE ENTITLED AN ACT TO RECODIFY THE PROVISIONS OF THE GENERAL STATUTES THAT REGULATE PRECIOUS METALS BUSINESSES, PAWNBROKERS AND CASH CONVERTERS, AND SECONDARY METALS RECYCLERS, AND TO STRENGTHEN METALS THEFT PREVENTION BY REQUIRING PERMITTING OF NONFERROUS METALS PURCHASERS, MAKING IT A CRIME TO CUT, MUTILATE, DEFACE, OR OTHERWISE INJURE THE PROPERTY OF ANOTHER TO OBTAIN NONFERROUS METALS, CREATING RELATED CRIMINAL OFFENSES, AND MAKING OTHER RELATED CHANGES TO THE GENERAL STATUTES.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:
Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ _____

☒ With recommendation that the House Concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 4

HOUSE BILL 199

Committee Substitute Favorable 3/31/11
Senate Judiciary II Committee Substitute Adopted 6/7/12
Fourth Edition Engrossed 6/12/12

Short Title: *Metal Theft Prevention Act of 2012.* *(Public)*

Sponsors:

Referred to:

March 2, 2011

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE PROVISIONS OF THE GENERAL STATUTES THAT REGULATE PRECIOUS METALS BUSINESSES, PAWNBROKERS AND CASH CONVERTERS, AND SECONDARY METALS RECYCLERS, AND TO *STRENGTHEN METALS THEFT PREVENTION BY REQUIRING PERMITTING OF NONFERROUS METALS PURCHASERS, MAKING IT A CRIME TO CUT,* MUTILATE, DEFACE, OR OTHERWISE INJURE THE PROPERTY OF ANOTHER TO OBTAIN NONFERROUS METALS, CREATING RELATED CRIMINAL OFFENSES, AND MAKING OTHER RELATED CHANGES TO THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 45.
"Pawnbrokers, Metal Dealers, and Scrap Dealers."

SECTION 2. Chapter 91A of the General Statutes is recodified as Part 1 of Article 45 of Chapter 66 of the General Statutes, G.S. 66-385 through G.S. 66-399.

SECTION 3. The title of Part 1 of Article 45 of Chapter 66 of the General Statutes, as enacted by Section 2 of this act, reads as rewritten:

"Part 1. Pawnbrokers and Cash ~~Converters Modernization Act.~~Converters."

SECTION 4. G.S. 91A-1, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-385. Short title.**

This ~~Chapter~~ Part shall be known and may be cited as the Pawnbrokers and Cash Converters Modernization Act."

SECTION 5. G.S. 91A-2, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-386. Purpose.**

The making of pawn loans and the acquisition and disposition of tangible personal property by and through pawnshops and cash converters vitally affects the general economy of this State and the public interest and welfare of its citizens. In recognition of these facts, it is the policy of this State and the purpose of the Pawnbrokers and Cash Converters Modernization Act to do all of the following:

(1) Ensure a sound system of making loans and acquiring and disposing of tangible personal property by and through pawnshops, and to prevent unlawful property transactions, particularly in stolen property, through licensing and regulating pawnbrokers.

~~(1a)~~(2) Ensure a sound system of acquiring and disposing of tangible personal property by and through cash converters and to prevent unlawful property transactions, particularly in stolen property, by requiring record keeping by cash converters.

~~(2)~~(3) Provide for pawnbroker licensing fees and investigation fees of licensees.

~~(3)~~(4) Ensure financial responsibility to the State and the general public.

~~(4)~~(5) Ensure compliance with federal and State laws.

~~(5)~~(6) Assist local governments in the exercise of their police authority."

SECTION 6. G.S. 91A-3, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-387. Definitions.**

The following definitions apply in this ~~Chapter:~~Part:

...

(2) Cash converter. – A person engaged in the business of purchasing goods from the public for cash at a permanently located retail store who holds himself or herself out to the public by signs, advertising, or other methods as engaging in that business. The term does not include any of the following:

a. Pawnbrokers.

b. Persons whose goods purchases are made directly from manufacturers or wholesalers for their inventories.

c. Precious metals dealers, to the extent that their transactions are regulated under ~~Article 25 of Chapter 66 of the General Statutes.~~Part 2 of this Article.

d. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, used clothing, children's furniture, and children's products, provided the amount paid for the individual item purchased is less than fifty dollars ($50.00).

e. Purchases by persons primarily in the business of obtaining from the public, either by purchase or exchange, sporting goods and sporting equipment, provided the amount paid for the individual item purchased is less than fifty dollars ($50.00).

...."

SECTION 7. G.S. 91A-5, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-389. License required.**

It is unlawful for any person, firm, or corporation to establish or conduct a business of pawnbroker unless such person, firm, or corporation has procured a license to conduct business in compliance with the requirements of this ~~Chapter.~~Part."

SECTION 8. G.S. 91A-6(c) and (d), as recodified by Section 2 of this act, read as rewritten:

"(c) Licenses shall be granted under this ~~Chapter~~ Part by the city if the pawnshop is to be operated within the corporate limits of a city as defined by G.S. 160A-1, and by a county if it is to be operated outside the corporate limits of any city as defined by G.S. 160A-1.

(d) Any license granted under this ~~Chapter~~ Part may be revoked by the county or city issuing it, after a hearing, for substantial abuses of this ~~Chapter~~ Part by the licensee."

SECTION 9. G.S. 91A-7(e), as recodified by Section 2 of this act, reads as rewritten:

"(e) Except as otherwise provided in this ~~Chapter,~~Part, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket."

SECTION 10. G.S. 91A-10(a), as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-395. Prohibitions.**

(a) A pawnbroker shall not:

(1) Accept a pledge from a person under the age of 18 years.

(2) Make any agreement requiring the personal liability of a pledgor in connection with a pawn transaction.

(3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this ~~Chapter.~~Part.

(4) Fail to exercise reasonable care to protect pledged goods from loss or damage.

(5) Fail to return pledged goods to a pledgor upon payment of the full amount due the pawnbroker on the pawn transaction. In the event such pledged goods are lost or damaged while in the possession of the pawnbroker, it shall be the responsibility of the pawnbroker to replace the lost or damaged goods with merchandise of like kind and equivalent value. In the event the pledgor and pawnbroker cannot agree as to replacement, the pawnbroker shall reimburse the pledgor in the amount of the value agreed upon pursuant to ~~G.S. 91A-7(b).~~G.S. 66-391(b).

(6) Take any article in pawn, pledge, or as security from any person, which is known to such pawnbroker to be stolen, unless there is a written agreement with local or State law enforcement.

(7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or purchased before the earlier of seven days after the date the pawn ticket record is electronically reported in accordance with ~~G.S. 91A-7(d)~~G.S. 66-391(d) or 30 days after the transaction, except in case of redemption by pledgor or items purchased for resale from wholesalers.

(8) Operate more than one pawnshop under one license, and such shop must be at a permanent place of business.

(9) Take as pledged goods any manufactured mobile home, recreational vehicle, or motor vehicle other than a motorcycle."

SECTION 11. G.S. 91A-11, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-396. Penalties.**

(a) Every person, firm, or corporation, their guests or employees, who shall knowingly violate any of the provisions of this ~~Chapter,~~Part, shall, on conviction thereof, be deemed guilty of a Class 2 misdemeanor. If the violation is by an owner or major stockholder or managing partner of the pawnshop and the violation is knowingly committed by the owner, major stockholder, or managing partner of the pawnshop, then the license of the pawnshop may be suspended at the discretion of the court.

(b) The provision of subsection (a) of this section shall not apply to violations of ~~G.S. 91A-10(a)(6)~~G.S. 66-395(a)(6) or G.S. 66-395(b) which shall be prosecuted under the North Carolina criminal statutes.

(c) Any contract of pawn the making or collecting of which violates any provision of this ~~Chapter,~~Part, except as a result of accidental or bona fide error of computation, shall be void, and the licensee shall have no right to collect, receive or retain any interest or fee whatsoever with respect to such pawn."

SECTION 12. G.S. 91A-12, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-397. Municipal or county authority.**

All of the counties and cities as defined by G.S. 160A-1 may by ordinance adopt the provisions of this ~~Chapter~~ Part and may adopt such further rules and regulations as the governing bodies of the counties and cities deem appropriate; provided, however, no county or city may regulate:

(1) Interest, fees, or recovery charges;
(2) Hours of operation, unless such regulation applies to businesses generally;
(3) The nature of the business or type of pawn transaction; or
(4) License fees in excess of rates set by the State."

SECTION 13. G.S. 91A-13, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-398. License renewal.**

Notwithstanding any provision of this ~~Chapter~~ Part to the contrary, any person, firm, or corporation licensed as a pawnbroker on or before October 1, 1989, shall continue in force until the natural expiration thereof and all other provisions of this ~~Chapter~~ Part shall apply to such license. Such pawnbroker shall be eligible for renewal of his license upon its expiration or subsequent renewals, provided such license complies with the requirements for renewal that were in effect immediately prior to October 1, 1989."

SECTION 14. G.S. 91A-14, as recodified by Section 2 of this act, reads as rewritten:

"**§ 66-399. Bond.**

Every person, firm, or corporation licensed under this ~~Chapter~~ Part shall, at the time of receiving the license, file with the city or county issuing the license a bond payable to such city or county in the sum of five thousand dollars ($5,000), to be executed by the licensee, and by two responsible sureties or a surety company licensed to do such business in this State, to be approved by the city or county, which shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed. The city or county may sue for forfeiture of the bond upon a breach thereof. Any person who obtains a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied may maintain an action in his own name upon the bond, to satisfy the judgment."

SECTION 15. Article 25 of Chapter 66 of the General Statutes is recodified as Part 2 of Article 45 of Chapter 66 of the General Statutes, G.S. 66-405 through G.S. 66-414.

SECTION 16. The title of Part 2 of Article 45 of Chapter 66 of the General Statutes, as enacted by Section 15 of this act, reads as rewritten:

"Part 2. ~~Regulation of~~ Precious Metal Businesses."

SECTION 17. G.S. 66-164, as recodified by Section 15 of this act, reads as rewritten:

"**§ 66-406. Definitions.**

The following definitions apply in this ~~Article:~~Part:

(1) Dealer. – A person who purchases precious metals from the public, other than by an exempted transaction, in the form of jewelry, flatware, silver services, or other forms and holds himself or herself out to the public by signs, advertising, or other methods as engaging in such purchases, including any independent contractor purchasing precious metals under any arrangement in any department store. An exempted transaction is one that is (i) not considered in determining whether a person is a dealer under this ~~Article~~ Part and (ii) not subject to the requirements of this ~~Article,~~Part, even if it is entered into by a person otherwise defined and regulated as a dealer. Exempted transactions are:
   a. Purchases directly from manufacturers or wholesalers of precious metals by permanently located retail merchants for their inventories.
   b. Pawns, pledges, or purchases of items made of precious metals, if the transaction is entered into by a licensed pawnbroker and the transaction is regulated under the provisions of ~~Chapter 91A of the General Statutes.~~Part 1 of this Article.

c. The acquisition of precious metals by a permanently located retail merchant through barter or exchange for other items sold in the ordinary course of the merchant's business, provided that the seller does not receive, as part of the transaction, any sum of money or any gift card or stored-value card, unless the card is redeemable only at that merchant's business.

...."

SECTION 18. G.S. 66-165, as recodified by Section 15 of this act, reads as rewritten:

"§ 66-407. Permits.

...

(b) Employee Requirements. – Every employee engaged in the precious metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local law enforcement agency and have his or her photograph taken by the agency. The employee also shall consent to a criminal history record check, which shall be performed by the local law enforcement agency. A person who refuses to consent to a criminal history record check shall not be employed by a dealer required to be licensed under this section. A person who has been convicted of a felony involving a crime of moral turpitude, larceny, receiving stolen goods, or of similar charges shall not be employed by a dealer required to be licensed under this section, unless the person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of registration. The agency shall issue to the employee a certificate of compliance with this section upon the applicant's payment of the sum of ten dollars ($10.00) to the agency. The certificate shall be renewed annually for a three-dollar ($3.00) fee and shall be posted in the work area of the registered employee. An employee is not subject to the requirements of this subsection if the employee is engaged in the precious metals purchasing business only incidentally to his or her main job responsibilities, and each precious metals transaction with which the employee is involved is overseen by a licensed dealer or registered employee. All records of transactions must be signed by the licensed dealer or registered employee at the time of the transaction, as required under ~~G.S. 66-169(a).~~G.S. 66-410(a).

The Department of Justice may provide a criminal history record check to the local law enforcement agency for an employee engaged in the precious metals business. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the employee, any additional information required by the Department of Justice, and a form signed by the employee consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The employee's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each employee a fee for conducting the checks of criminal history records authorized by this subsection.

(c) Special Occasion Permit. – A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local law enforcement agency; provided, however, that a permittee under subsection (a) of this section shall apply for a special occasion permit with the local law enforcement agency that issued the dealer's permit. The Department of Public Safety shall approve the forms for both the

application and the permit. The application shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local law enforcement agency for a special occasion permit shall furnish the local law enforcement agency with the information required in an application for a dealer's permit as set forth in subsection (a) of this section. In addition, the applicant shall provide a physical address where any item included in a dealer purchase will be held for the period required under ~~G.S. 66-170.~~G.S. 66-411. The physical address shall be the location where the purchase was made, unless another physical address within the law enforcement jurisdiction where the purchase was made is approved by the law enforcement agency that issues the permit. The items shall be available at all reasonable times for inspection on the premises by law enforcement agencies.

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless the applicant has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state, unless that person has had his or her rights of citizenship restored pursuant to Chapter 13 of the General Statutes for five years or longer immediately preceding the date of application.

The Department of Justice may provide a criminal history record check to the local law enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The filing fee for a special occasion permit application is one hundred eighty dollars ($180.00) to provide for the administrative cost of the local law enforcement agency including purchase of required forms and the cost of conducting the criminal history record check of the applicant. The fee is not refundable even if the permit is denied or is later suspended or revoked. A special occasion permit is in addition to and not in lieu of other business licenses and is not transferable. No person other than the dealer named on the permit and that dealer's

employees may engage in the business of purchasing precious metals under the authority of the permit.

A special occasion permit is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form approved by the Department of Public Safety and shall be accompanied by a nonrefundable renewal fee of one hundred eighty dollars ($180.00).

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals."

SECTION 19. G.S. 66-167, as recodified by Section 15 of this act, reads as rewritten:

"**§ 66-408. Perjury; punishment.**

Any person who shall willfully commit perjury in any application for a permit or exemption filed pursuant to this ~~Article~~ Part shall be guilty of a Class 2 misdemeanor."

SECTION 20. G.S. 66-168, as recodified by Section 15 of this act, reads as rewritten:

"**§ 66-409. Bond or trust account required.**

Before any permit shall be issued to a dealer pursuant to ~~G.S. 66-165,~~G.S. 66-407, the dealer shall execute a satisfactory cash or surety bond or establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina in the sum of ten thousand dollars ($10,000). The bond or trust account shall be in favor of the State of North Carolina. A surety bond is to be executed by the dealer and by two responsible sureties or a surety company licensed to do business in the State of North Carolina and shall be on a form approved by the Department of Public Safety. Any bond shall be kept in full force and effect and shall be delivered to the law-enforcement agency which first issued a current permit to the dealer. A bond or trust account shall be for the faithful performance of the requirements and obligations of the dealer's business in conformity with this ~~Article.~~Part. Any law-enforcement agency shall have full power and authority to revoke the permit and sue for forfeiture of the bond or trust account upon a breach thereof. Any person who shall have suffered any loss or damage by any act of the permittee that constitutes a violation of this ~~Article~~ Part shall have the right to institute an action to recover against such permittee and the surety or trust account. Upon termination of the bond or trust account the permit shall become void."

SECTION 21. G.S. 66-169(a), as recodified by Section 15 of this act, reads as rewritten:

"**§ 66-410. Records to be kept.**

(a) Every dealer to whom a permit has been issued pursuant to ~~G.S. 66-165~~ G.S. 66-407 shall maintain consecutively numbered records of each precious metals transaction. Each consecutively numbered record shall be made at the time of the transaction and shall contain a clear and accurate description of the transaction. A valid description shall include each of the following applicable and available items of information: the manufacturer's name, the model, the model number, the serial number, and any engraved numbers or initials found on the items; the date of the transaction; the name, sex, race, residence, telephone number and driver's license number of the person selling the items purchased; and the signature of both the dealer or registered employee and the seller. In the event the seller cannot furnish valid, unexpired photographic identification in the form of a drivers license, State-issued identification card, passport, or military identification card, the dealer shall require two forms of positive identification."

SECTION 22. G.S. 66-170, as recodified by Section 15 of this act, reads as rewritten:

"**§ 66-411. Items not to be modified.**

No item included in a dealer purchase shall be sold, traded or otherwise disposed of, melted, cut or otherwise changed in form nor shall any item be removed from the licensed premises, or other location specified on the application for a special occasion permit, for a period of seven days from the date the transaction was reported in accordance with ~~G.S. 66-169.~~G.S. 66-410."

SECTION 23. G.S. 66-172, as recodified by Section 15 of this act, reads as rewritten:

"**§ 66-413. Penalties.**

Any dealer who violates the provisions of this ~~Article~~ Part shall be deemed guilty of a Class 2 misdemeanor. In addition any dealer so convicted shall be ineligible for a dealer's permit for a period of three years from the date of conviction. Each and every violation shall constitute a separate and distinct offense."

SECTION 24. G.S. 25-9-201(b) reads as rewritten:

"(b) Applicable consumer laws and other law. – A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers and Cash Converters Modernization Act (~~Chapter 91A~~Part 1 of Article 45 of Chapter 66 of the General Statutes)."

SECTION 25. G.S. 105-88(a)(3) reads as rewritten:

"**§ 105-88. Loan agencies.**

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars ($250.00) for each location at which the business is conducted:

(1) The business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under ~~Chapter 91A~~Part 1 of Article 45 of Chapter 66 of the General Statutes."

SECTION 26. G.S. 66-11 and G.S. 66-11.1 are repealed.

SECTION 27. G.S. 66-11.2 is recodified as G.S. 66-426 under Part 3 of Article 45 of Chapter 66 of the General Statutes, as enacted by Section 28 of this act.

SECTION 28. Chapter 66 of the General Statutes is amended by adding a new Part to read:

"Part 3. Regulation of Sales and Purchases of Metals.

"**§ 66-415. Definitions.**

The following definitions apply in this Part:

(1) Cash card system. – A system of payment that captures a photograph of a payment recipient and that provides payment in cash or in a form other than cash.

(2) Fixed site. – A site occupied by a secondary metals recycler as the owner of the site or as a lessee of the site under a lease or other rental agreement providing for occupation of the site by a nonferrous metals purchaser for a total duration of not less than 364 days.

(3) Law enforcement officer. – Any duly constituted law enforcement officer of the State or of any municipality or county.

(4) Nonferrous metals. – Metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers. The term shall not include precious metals as defined and regulated in Part 2 of this Article.

(5) Nonferrous metals purchaser. – A secondary metals recycler who purchases, gathers, or obtains nonferrous metals.

(6) Permit. – A permit issued pursuant to G.S. 66-421(a).

(7) Regulated metals property. – All ferrous and nonferrous metals.

(8) Secondary metals recycler. – Any person, firm, or corporation in the State:

a. That is engaged in the business of gathering or obtaining ferrous or nonferrous metals that have served their original economic purpose or is in the business of performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value; or

b. That has facilities for performing the manufacturing process by which ferrous metals or nonferrous metals are converted into raw material products consisting of prepared grades and having an existing or potential economic value, by methods including, but not limited to, the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

"**§ 66-416. Required records and receipts for regulated metals transactions.**

(a) Receipt Required. – A secondary metals recycler shall issue a receipt for all purchase transactions in which the secondary metals recycler purchases regulated metals property. This receipt shall be issued to and signed by the person delivering the property, and the secondary metals recycler shall be able to provide documentation regarding the employee who completed the transaction.

(b) Records Required. – A secondary metals recycler shall maintain a record of all purchase transactions in which the secondary metals recycler purchases regulated metals property. The record of each transaction shall contain the following information:

(1) The name and address of the secondary metals recycler.

(2) The name, initials, or other identification of the individual entering the information.

(3) The date of the transaction.

(4) The weight of the regulated metals property purchased.

(5) The description made in accordance with the custom of the trade of the type of regulated metals property purchased and the physical address where the regulated metals were obtained by the seller and the date when purchased, and a statement signed by the seller or the seller's agent certifying that the seller or the seller's agent has the lawful right to sell and dispose of the property.

(6) The amount of consideration given for the regulated metals property.

(7) The name and address of the vendor of the regulated metals property and the license plate number, make, model, and color of the vehicle used to deliver the regulated metals.

(8) A photocopy or electronic scan of the unexpired drivers license or state or federally issued photo identification card of the person delivering the regulated metals property to the secondary metals recycler. If the secondary metals recycler has a copy of the valid photo identification of the person delivering the regulated metals property on file, the secondary metals recycler must examine the photo identification and verify that it has not expired, but may reference the photo identification that is on file without making a separate photocopy or electronic scan for each subsequent transaction. If the person delivering the regulated metals property does not have an unexpired drivers license or an unexpired state or federally issued photo identification card, the secondary metals recycler shall not complete the transaction.

(9) A copy of the receipt required under subsection (a) of this section when all the information required under subsection (a) of this section is clear and legible or, in the event the copy of the receipt is not clear or not legible, the original receipt.

(10) A video or digital photograph of the seller together with the regulated metals property being delivered by the seller. The video or photograph required by this section shall be of a quality that is sufficient to allow a person of ordinary faculties to identify the person recorded or photographed.

(11) In transactions involving catalytic converters that are not attached to a vehicle, and central air conditioner evaporator coils or condensers, the person delivering the materials shall place next to that person's signature on the receipt required under subsection (a) of this section, a clear impression of that person's index finger that is in ink and free of any smearing. A secondary metals recycler may elect to obtain the fingerprint electronically. If the secondary metals recycler has a copy of the fingerprint of the person delivering the nonferrous metal on file, the secondary metals recycler must examine the photo identification, but may reference the fingerprint that is on file without making a separate fingerprint for each subsequent transaction.

"**§ 66-417. Inspection of regulated metals property and records.**

(a) Retention of Records. – A secondary metals recycler shall keep and maintain the information required under G.S. 66-416(b) for not less than two years from the date of the purchase of the regulated metals property. Records shall be securely maintained at all times and shall be destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(b) Inspection of Regulated Metals Property and Records. – During the usual and customary business hours of a secondary metals recycler, a law enforcement officer shall have the right to inspect all of the following:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler.

(2) Any and all records required to be maintained under G.S. 66-416(b).

(c) Making Receipts Available for Inspection by Law Enforcement. – A secondary metals recycler shall make receipts for the purchase of regulated metals property available for pickup each regular workday if requested by the sheriff or chief of police of the county or the chief of police of the municipality in which the secondary metals recycler is located. The sheriff or the chief of police may request these receipts to be electronically transferred directly to the law enforcement agency. Records retained by a law enforcement agency shall be securely

retained as required by law and destroyed in a manner that protects the identity of the owner of the property, the seller of the property, and the purchaser of the property.

(d) Records Are Not Public. – Records submitted to any public law enforcement agency pursuant to this section are records of criminal investigations or records of criminal intelligence information as defined in G.S. 132-1.4 and are not public records as defined by G.S. 132-1.

"**§ 66-418. Hold notices for nonferrous metals; retention of nonferrous metals.**

(a) Hold Notices. – When a law enforcement officer has reasonable suspicion to believe that any item of nonferrous metal in the possession of a nonferrous metals purchaser has been stolen, the law enforcement officer may issue a hold notice to the nonferrous metals purchaser. The hold notice must be in writing, be delivered to the nonferrous metals purchaser, specifically identify those items of nonferrous metal that are believed to have been stolen and that are subject to the notice, and inform the nonferrous metals purchaser of the information contained in this section. Upon receipt of the notice, the nonferrous metals purchaser must not process or remove the items of nonferrous metal identified in the notice, or any portion thereof, from the secondary metal recycler's fixed site for 15 calendar days after receipt of the notice unless released prior to the 15-day period by the law enforcement officer. A hold notice may be renewed for an additional 30 days by the law enforcement officer. A renewal must satisfy the same requirements as an initial hold notice in order to be valid.

(b) Retention of Nonferrous Metals. – Any secondary metals recycler owner convicted of a felonious violation of this Article, G.S. 14-71, 14-71.1, or 14-72 shall hold and retain nonferrous metals for seven days from the date of purchase before selling, dismantling, crushing, defacing, or in any manner altering or disposing of the regulated metals property.

"**§ 66-419. Prohibited activities and transactions.**

(a) A secondary metals recycler shall not do any of the following:

(1) Operate any business that cashes checks at a fixed site at which the secondary metals recycler purchases regulated metals property.

(2) Purchase nonferrous metals for the purpose of recycling the nonferrous metals, unless the nonferrous metals purchaser possesses a valid permit.

(3) Purchase any central air conditioner evaporator coils or condensers, or catalytic converters that are not attached to a vehicle, except that a secondary metals recycler may purchase these items from a company, contractor, or individual that is in the business of installing, replacing, maintaining, or removing these items.

(4) Purchase any regulated metals property that the secondary metals recycler knows or reasonably should know to be stolen.

(b) It shall be unlawful to transport or possess on highways of this State an amount of copper weighing in the aggregate more than 25 pounds, unless at least one of the following is true:

(1) The vehicle is used in the ordinary course of business for the purpose of transporting nonferrous metals. This term includes vehicles used by gas, electric, communications, water, plumbing, electrical, and climate conditioning service providers, and their employees, agents, and contractors, in the course of providing these services.

(2) The person transporting or possessing the copper possesses, and presents when requested, a valid bill of sale for the copper.

(3) A law enforcement officer determines that the copper is not stolen and is in the rightful possession of the person.

(c) A secondary metals recycler shall not purchase any of the following:

(1) Any regulated metal marked with the initials or other identification of a telephone, cable, electric, water, or other public utility, or any brewer.

(2) Any utility access cover.

(3) Any street light pole or fixture.
(4) Any road or bridge guard rail.
(5) Any highway or street sign.
(6) Any water meter cover.
(7) Any metal beer keg, including any made of stainless steel that is clearly marked as being the property of the beer manufacturer.
(8) Any traffic directional or control sign.
(9) Any traffic light signal.
(10) Any regulated metal marked with the name of a government entity.
(11) Any spikes, plates, or other railroad track components or signs, and any property owned by a railroad and marked and otherwise identified as such.
(12) Any historical marker or any grave marker or burial vase.

"**§ 66-420. Permissible payment methods for nonferrous metals purchasers.**

(a) Limitation on Cash Purchases. – No nonferrous metals purchaser shall enter into a cash transaction for the purchase of copper, and no nonferrous metals purchaser shall purchase any nonferrous metal property for any cash consideration greater than one hundred dollars ($100.00) per transaction. Any payment in excess of one hundred dollars ($100.00) per transaction shall be made by check, money order or cash card system. A nonferrous metals purchaser shall not make more than one cash purchase per day from any individual, business, corporation or partnership.

"**§ 66-421. Issuance of nonferrous metals purchase permits by Sheriff; form; fees; recordkeeping.**

(a) Issuance of Permits. – The sheriff of each county shall issue a nonferrous metals purchase permit to an applicant if the applicant (i) has a fixed site in the sheriff's county; (ii) declares on a form provided by the sheriff that the applicant is informed of and will comply with the provisions of this Part; (iii) does not have a permit that has been revoked pursuant to G.S. 66-324(b) at the time of the application; and (iv) has not been convicted of more than three violations of this Part. A permit shall be valid for 12 months and shall be valid only for fixed sites in the county of issuance. A permit shall be obtained for each fixed site at which nonferrous metals are purchased.

(b) Form. – The Attorney General shall prescribe a standard application form and a standard permit form to be used by sheriffs. The permit form shall contain, at a minimum, the date of issuance and the name and address of the permit holder.

(c) Fees; Record-Keeping Requirements. – The sheriff shall not charge a fee for a permit; and shall retain a copy of any permit issued.

"**§ 66-422. Exemptions.**

This Part does not apply to:

(1) Purchases of regulated metals property from a manufacturing, industrial, government, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business.
(2) Purchases of regulated metals property that involve only beverage containers, except that G.S. 66-418 shall apply in that case.

"**§ 66-423. Preemption.**

A county or municipality shall not enact any local law, ordinance, or regulation regulating secondary metals recyclers or regulated metals property that conflicts with this Part, and this Part preempts all existing laws, ordinances, or regulations that conflict with it.

"**§ 66-424. Violations.**

(a) Punishment Generally. – Unless the conduct is covered by some other provision of law providing greater punishment, any person knowingly and willfully violating any of the provisions of this Part shall be guilty of a Class 1 misdemeanor for a first offense. A second or subsequent violation of this Part is a Class I felony.

(b) Revocation of Permits. – If the owner or the employees of a fixed site are convicted of an aggregate of three or more violations of this Part within a 10 year period, the permit associated with that fixed site shall be immediately revoked by the sheriff for a period of six months. Any attempt to circumvent this subsection by procuring a permit through a family member shall result in extension of the revocation period for an additional 18 months.

"**§ 66-425. Restitution.**

The court may order a defendant to make restitution to the secondary metals recycler or property owner, as appropriate, for any damage or loss caused by the defendant and arising out of a violation of G.S. 14-71, G.S. 14-71.1, G.S. 14-72, G.S.14-159.4, G.S. 66-419(a) (3), or G.S. 66-419(a)(4) committed by the defendant."

SECTION 29. G.S. 66-11.2(a), as recodified by Section 27 of this act, reads as rewritten:

"**§ 66-426. Forfeiture of vehicles used to transport unlawfully obtained regulated metals property.**

(a) Vehicles which are used or intended for use to convey or transport, or in any manner to facilitate the conveyance or transportation of unlawfully obtained regulated metals property, as defined by this ~~Article,~~Part, are subject to forfeiture, except that:

(1) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission, committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of any state;

(2) No conveyance shall be forfeited unless the violation involved is a felony;

(3) A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party who had no knowledge of or consented to the act or omission;

(4) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section."

SECTION 30. G.S. 20-62.1(a) reads as rewritten:

"**§ 20-62.1. Purchase of vehicles for purposes of scrap or parts only.**

(a) Records for Scrap or Parts. – A secondary metals recycler, as defined in ~~G.S. 66-11(a)(3),~~G.S. 66-415(8), and a salvage yard, as defined in G.S. 20-137.7(6), purchasing motor vehicles solely for the purposes of dismantling or wrecking such motor vehicles for the recovery of scrap metal or for the sale of parts only, must comply with the provision of G.S. 20-61, provided, however, that a secondary metals recycler or salvage yard may purchase a motor vehicle without a certificate of title, if the motor vehicle is 10 model years old or older and the secondary metals recycler or salvage yard comply with the following requirements:

...."

SECTION 31. Article 22 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-159.4. Cutting, mutilating, defacing, or otherwise injuring property to obtain nonferrous metals.**

(a) Definition of Nonferrous Metals. – For purposes of this section, the term "nonferrous metals" means metals not containing significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, and stainless steel beer kegs or containers.

(b) Prohibited Act. – It is unlawful for a person to willfully and wantonly cut, mutilate, deface, or otherwise injure any personal or real property of another, including any fixtures or improvements, for the purpose of obtaining nonferrous metals in any amount.

(c) Punishment. – Violations of this section are punishable as follows:

(1) Default. – If the direct injury is to property, and the amount of loss in value to the property, the amount of repairs necessary to return the property to its condition before the act, or the property loss (including fixtures or improvements) is less than one thousand dollars ($1,000), a violation shall be punishable as a Class 1 misdemeanor. If the applicable amount is one thousand dollars ($1,000) or more, but less than ten thousand dollars ($10,000), a violation shall be punishable as a Class H felony. If the applicable amount is ten thousand dollars ($10,000) or more, a violation shall be deemed an aggravated offense and shall be punishable as a Class F felony.

(2) When person suffers serious injury. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in a serious injury to another person is punishable as a Class A1 misdemeanor.

(3) When person suffers a serious bodily injury. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in serious bodily injury to another person is punishable as a Class F felony. For purposes of this subdivision, "serious bodily injury" is as defined in G.S. 14-32.4.

(4) When person is killed. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in the death of another person is punishable as a Class D felony.

(5) When critical infrastructure affected. – Unless the conduct is covered under some other provision of law providing greater punishment, a violation of this section that results in the disruption of communication or electrical service to critical infrastructure or to more than 10 customers of the communication or electrical service is guilty of a Class 1 misdemeanor.

(d) Liability. – This section does not create or impose a duty of care upon the owner of personal or real property that would not otherwise exist under common law. A public or private owner of personal or real property shall not be civilly liable:

(1) To a person who is injured while committing or attempting to commit a violation of this section.

(2) To a person who is injured while a third party is committing or attempting to commit a violation of this section.

(3) For a person's injuries caused by a dangerous condition created as a result of a violation of this section, when the owner does not know and could not have reasonably known of the dangerous condition."

SECTION 32. Pawnbroker licenses and permits to engage as a dealer in the business of purchasing precious metals that are valid on the effective date of this act shall continue in force until the natural expiration thereof, unless otherwise revoked or suspended in accordance with applicable law.

SECTION 33. This act becomes effective October 1, 2012, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HOUSE BILL 199:
Metal Theft Prevention Act of 2012

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 14, 2012
Introduced by:	Rep. Rhyne	**Prepared by:**	Wendy Graf Ray
Analysis of:	Fourth Edition		Committee Counsel

SUMMARY: House Bill 199 would recodify the provisions of the General Statutes pertaining to the regulation of precious metals businesses, pawnbrokers and cash converters, and secondary metals recyclers. It would require the permitting of nonferrous metals purchasers, make it a crime to cut, mutilate, deface, or otherwise injure the property of another to obtain nonferrous metals and create other related criminal offenses, and make other related changes.

CURRENT LAW: Pawnbrokers and Cash Converters are currently regulated under Chapter 91A of the General Statutes. Precious Metal Businesses and Secondary Metals Recyclers are regulated under Chapter 66 of the General Statutes (Commerce and Business).

Under current law, recyclers must issue a receipt to individuals who deliver regulated metals for recycling. Receipts for catalytic converters and central air conditioner evaporator coils or condensers must bear the fingerprint of the individual who delivered the item for recycling. Law enforcement officers may request electronic transfer of secondary metals recycler receipts. Recyclers may not purchase catalytic converters not attached to vehicles and central air conditioner evaporator coils or condensers, except from companies that are in the business of replacing the items. Purchases for more than $100 must be paid by check or money order, and a photograph of the individual selling the items must be maintained by the recycler for 90 days. Secondary metals recyclers are prohibited from purchasing any metal with an identification mark or name of a utility, railroad company, brewer, or government entity; they are also prohibited from purchasing utility access covers, street light poles, guard rails, street signs, water meter covers, traffic signals and signs, historical or grave markers, or metal beer kegs. The prohibitions do not apply to purchases of beverage containers, or of regulated metals or metals from an entity that generates or sells the regulated property in the ordinary course of business.

BILL ANALYSIS: Sections 1-14 of the bill would recodify the provisions of the General Statutes pertaining to the regulation of pawnbrokers and cash converters.

Sections 15-23 would recodify provisions of the General Statutes pertaining to the regulation of precious metal businesses.

Sections 24-25, and Section 30 make technical changes that are necessary as a result of the recodification.

Section 26 would repeal existing law concerning the regulation of secondary metals recyclers, and **Sections 27 and 29** would recodify and make a technical change to an existing provision concerning the forfeiture of vehicles used to transport unlawfully obtained regulated metals property.

Section 28 of the bill provides for the regulation of sales and purchases of metals. The bill would do the following:

- Require secondary metals recyclers to issue receipts when purchasing regulated metals property. Receipts must be issued to and signed by the person delivering the property.

- Require secondary metals recyclers to maintain a record of purchase transactions; records must contain specified information and be kept for a period of at least 2 years from the date of purchase.
- Authorize law enforcement to inspect regulated metals property in possession of the secondary metals recycler, and all records in possession of the recycler. Receipts would be available for pickup by law enforcement, or transmitted electronically to the law enforcement agency.
- Provide for the holding of property suspected to be stolen.
- Prohibit secondary metals recyclers from making cash payments for copper, and also prohibit cash payments of more than $50. Payments in excess of $50 could be made only by check or money order.
- Require the issuance of purchase permits by the county sheriff. A permittee would be required to have a fixed site in the county where the permit is to be issued. Permits would be valid for 12 months. No fee would be charged for the permit.
- Make knowing and willful violations punishable as a Class 1 misdemeanor for a first offense; 2nd or subsequent violations would be a Class I felony.
- Provide for the revocation of a purchase permit for 3 or more violations.
- Provide for restitution by the defendant.

Section 31 makes it a criminal offense to cut, mutilate, deface, or otherwise injure the real or personal property of another to obtain nonferrous metals. Violations are punishable as prescribed, ranging from a Class 1 misdemeanor to a Class D felony depending upon the amount of property loss and whether the violation results in the injury or death of a person.

EFFECTIVE DATE: The bill would become effective December 1, 2012 and apply to offenses committed on or after that date.

Brenda Carter, counsel to Senate Judiciary II, substantially contributed to this summary.

H199-SMSU-71(e4) v1

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 199 (Fourth Edition)

SHORT TITLE: Metal Theft Prevention Act of 2012.

SPONSOR(S): Representative Rhyne

FISCAL IMPACT

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

	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
GENERAL FUND					
Prison			** No Estimate Available*		
Recurring					
Nonrecurring					
Probation			** No Estimate Available*		
Judicial			** No Estimate Available*		
Recurring					
Nonrecurring					
TOTAL EXPENDITURES:			** No Estimate Available*		
ADDITIONAL PRISON BEDS: (cumulative)*			** No Estimate Available*		
FTE POSITIONS: (cumulative)			** No Estimate Available*		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Public Safety; Judicial Branch

EFFECTIVE DATE: December 1, 2012

**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:

The proposed legislation strengthens nonferrous metals theft prevention by (1) requiring permitting of nonferrous metals sellers and purchasers and (2) making it a crime to cut, mutilate, deface, or otherwise injure the property of another to obtain nonferrous metals. The bill requires that receipts and records be kept by secondary metals recyclers, which the bill defines as any firm or corporation that collects used ferrous or nonferrous metals for the purpose of reusing them, converts such metals into raw materials, or has the necessary equipment to convert such metals into raw materials. The bill also provides criminal penalties for various offenses related to the sale, purchase, transport, and possession of nonferrous metals. The proposed legislation defines nonferrous metal as metals not containing significant quantities of iron or steel, such as copper, aluminum other than aluminum cans, catalytic converters, or stainless steel beer kegs or containers.

ASSUMPTIONS AND METHODOLOGY:

General

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. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), makes changes to North Carolina's court system, corrections system (both to prisons and probation), and to post-release supervision. The Act also creates a statewide confinement program for housing misdemeanants with sentences of less than 180 days in county jails. Previously, county jails were only required to house misdemeanants with sentences of fewer than 90 days. In addition, all F-I felons are subject to nine months of post-release supervision (PRS). B1-E felony PRS is increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that would be needed as a result of revocations that would occur during the PRS period.

Judicial Branch

The Administrative Office of the Courts (AOC) provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The proposed legislation's creation of new criminal offenses will create increased criminal filings. Because these are new offenses, AOC is unable to anticipate the number of persons that will be charged with these new offenses created by the proposed G.S. 66-397 and is therefore unable to predict the fiscal impact of these provisions.

Department of Public Safety – Prison Section

The proposed legislation would impact the need for prison beds and Post-Release Supervision (PRS) caseloads. Due to the lack of historical data under Justice Reinvestment Act (JRA), it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations. It is also not known how many offenders may be repeat offenders under the proposed statue.

The lack of an AOC offense code is some indication that this offense is infrequently charged and/or infrequently results in convictions. Therefore, the repeal of G.S. 66-11 is not expected to have an impact on the prison population.

Since the proposed section creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this section on the prison population. It is not known how many offenders might be convicted and sentenced under the proposed section. Since Part 1 of Article 45 is substantially similar to G.S. 66-11, it is not expected to have a significant impact on the prison population.

Violations of Part 1 of Article 45 of the proposed legislation are punishable as Class 2 misdemeanors. In addition, commissions of perjury in order to obtain a nonferrous metals permit are punishable as Class 2 misdemeanors. In FY 2010-11, 27 percent of Class 2 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 2 convictions was 22 days. In FY 2010-11, 25 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. The impact on local jails is unknown.

Violations of Part 3 of Article 45 and certain amendments to Section 31 are punishable as Class 1 misdemeanors. In FY 2010-11, 25 percent of Class 1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class 1 convictions was 41 days. Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in county jails. Therefore, convictions for this proposed offense would not be expected to have any significant impact on the prison population. The impact on local jail populations is not known.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class A1 misdemeanor if such actions result in injury to another person. In FY 2010-11, 33 percent of Class A1 misdemeanor convictions resulted in active sentences. The average sentence imposed for Class A1 convictions was 70 days.

Structured Sentencing misdemeanants who receive an active sentence of 180 days or less are housed in county. Therefore, convictions for this proposed offense would not be expected to have a significant impact on the prison population. The impact on the Statewide Misdemeanant Confinement Program and local jail populations is not known.

Subsequent violations of certain provisions of the proposed legislation are punishable as Class I felonies. It is not known how many offenders may be repeat offenders under the proposed statute and would be sentenced as Class I felons. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 18 percent of Class I convictions will result in active sentences, with an average estimated time served of 7 months. If, for example, there were 11 Class I convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class H felony if such actions result in injury to property in a value between $1,000 and $10,000. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 38 percent of Class H convictions will result in active sentences, with an average estimated time served of 10 months. If, for example, there were three Class H convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and one additional prison bed the second year. In addition, since nine months of Post-Release Supervision (PRS) follows release from prison for offenders convicted of Class H felonies, there will be some impact on prison beds due to revocations (length of revocation period may vary). Due to the lack of historical data under JRA, it is not possible to estimate the number of prison beds that would be needed as a result of PRS revocations.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class F felony if such actions result in serious bodily injury to another person or if such actions result in injury to property worth a value that exceeds $10,000. Based on FY 2010-11 data and changes under the Justice Reinvestment Act (JRA), it is estimated that 54 percent of Class F convictions will result in active sentences, with an average estimated time served of 17 months. If, for example, there were two Class F convictions for this proposed offense per year, active sentences would result in the need for one additional prison bed the first year and two additional prison beds the second year.

The amendments to Section 31 made by the proposed bill makes mutilating or defacing property in an attempt to take nonferrous metal from that property a Class D felony if such actions result in the death of another person. Under Structured Sentencing, with the exception of extraordinary mitigation, all Class D offenders are required to receive an active sentence. In FY 2010-11 the average estimated time served for an offender convicted of a Class D offense was 70 months. If, for example, there was one conviction for this proposed offense per year, this proposed change would result in the need for one additional prison bed the first year and two additional prison beds the second year. In addition, since twelve months of Post-Release Supervision follows release from prison for offenders convicted of Class B1-E felonies, there will be some impact on Post-Release Supervision caseloads and prison beds due to revocations (length of revocation period may vary).

Department of Public Safety – Community Corrections Section

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

Offenders given intermediate or community sanctions requiring supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service.[1] General supervision of intermediate and community offenders by a probation officer costs $3.57 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution.

In FY 2010-11, one percent of Class 2 misdemeanants received intermediate sentences; and 72 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 17 and 13 months, respectively. Although there is no available estimate for the number of additional Class 2 misdemeanor convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is $1,846 and $1,412, respectively.

In FY 2010-11, three percent of Class 1 misdemeanants received intermediate sentences; and 72 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 19 and 15 months, respectively. Although there is no available estimate for the number of additional Class 1 misdemeanor convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is $2,063 and $1,629, respectively.

In FY 2010-11, six percent of Class A1 misdemeanants received intermediate sentences; and 61 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 20 and 17 months, respectively. Although there is no available estimate for the number of additional Class A1 misdemeanor convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is $2,172 and $1,846, respectively.

In FY 2010-11, 40 percent of Class I felons received intermediate sentences; and 47 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 27 and 22 months, respectively. Although there is no estimate available of the number of additional Class I felony convictions from subsequent offenses under the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is $2,932 and $2,389, respectively.

[1] DCC incurs costs of $1.29 per day for each offender sentenced to the Community Service Work Program.

In FY 2010-11, 49 percent of Class H felons received intermediate sentences; and 13 percent received community punishments. The average lengths of intermediate and community punishment imposed for this offense class were 30 and 27 months, respectively. Although there is no available estimate for the number of additional Class H felony convictions from the proposed legislation, the annual cost of one additional intermediate sentence and one additional community sentence is $3,258 and $2,932, respectively.

In FY 2010-11, 46 percent of Class F felons received intermediate sentences. The average length of intermediate punishment imposed for this offense class was 34 months. Although there is no available estimate for the number of additional Class F felony convictions from the proposed legislation, the annual cost of one additional intermediate sentence is $3,692.

SOURCES OF DATA: Department of Public Safety; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Luke Roniger, John Poteat

APPROVED BY: Mark Trogdon, Acting Director
Fiscal Research Division

DATE: June 13, 2012.



Signed Copy Located in the NCGA Principal Clerk's Offices

VISITOR REGISTRATION SHEET

Judiciary C — 6.14.2012

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Perrigo	Sen Daniel 41
Charles Newman	Sen Daniel 307 Academia Court Durham 27713
Greg Brown	Ral Metals
Ed Sudderth	Brooks Pierce
Fred Baggett	Police Chiefs
Mildred Spearman	NCAOC
Brad Phillips	TWC
Tommy Robinson	TWC
Connie Wilson	NCCTA
Tom Mayo	NMRs
Chris Killian	Nelson Mullins

VISITOR REGISTRATION SHEET

Judiciary C — 6.14.2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cameron Hanby	Electricities
Ken Melton	K.M.A.
Andrew Cagle	NC Sheriffs' Assn.
DAVID BARNES	PS
Steve Metcalf	COOPS
Wendy Kelly	Big Sandy
Steve Brewer	CTL
John Palmato	NCAOA
Gill Frazier	NCDACS
Ray Starling	NCDA+CS
Cady Thomas	NCAR
David McSwain	"

VISITOR REGISTRATION SHEET

Judiciary C
(Committee Name)

6/14/12
Date

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NAME	FIRM OR AGENCY AND ADDRESS
Paul Thomas	NCFB
Leonard Hobby	Retired
Mark Gibson	NCPIA
[illegible]	NCPBA
[illegible]	NCNN
Latonia Strickland	NCACC
M. Bailey	Electricities
Lori Ann Harris	LDHA
Michelle Frazier	MFTS
Herb Crenshaw	AT+T
Kathy Hawkins	Duke Energy
Rick Zechini	Progress Energy
[illegible]	NCAFP
Chuck Greene	AT+T
Michael R Thompson	Dominion NC Power
Preston Howard	NCIG

09-21-201

VISITOR REGISTRATION SHEET

Judiciary C — 6.14.2012

Name of Committee — Date

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NAME	FIRM OR AGENCY AND ADDRESS
Will Culpepper	MVA
Sarah Hardin	CTL
Elise Quick	Troutman Sanders
aniel Baum	Troutman Sanders
W. Daniel "Hamburger"	NC RMA
Zeis Alley	NMRS
Lucius Pullen	NCCA Counsel
Susan Valan	NW
J Bell	ATT

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 20, 2012

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 20, 2012, at 10:03 a.m. in room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Hackney, Harrison, Insko, Jones, Jordan, Mobley, Saine, and Weiss.

Rep. Tim Moore presided and called the meeting to order.

The following bills were considered:

HB 237, 2012 Workers' Compensation Amendments (Representatives Dollar, Rhyne, McElraft, Folwell, Primary Sponsors). Chair Moore recognized Rep. Folwell to explain the bill. No discussion. Representative Cleveland was recognized for a motion to recommend concurrence, and with a majority being in favor, the motion carried.

SB 133, Juror Privacy (Senator Clodfelter, Primary Sponsor). Chair Moore recognized Representative Jones for a motion to place the Proposed Committee Substitute before the committee. Vote called and motion passed. Senator Clodfelter was recognized to explain the bill. To further explain the bill, Jan Paul, Staff, was recognized to speak. Chair Moore recognized from the public to comment: Lorrin Freeman (Wake County Clerk of Superior Court). Discussion. Public comment: Jack Berry (Service Commander Software, Inc.) was recognized. Discussion. Representative Weiss offered amendment (amendment 1). Chair Moore called for vote on the amendment, and the amendment was adopted. Representative Cleveland was recognized for a motion for a favorable report for the Proposed Committee Substitute as amended, and unfavorable to the original bill. With the majority being in favor, the motion carries.

SB 26, North Carolina Benefit Corporation Act (Senators Vaughan, Stevens, and Kinnaird, Primary Sponsors). Chair Moore accepted a motion from Representative Brown to place the Proposed Committee Substitute before the committee. Vote called and motion passed. Senator Vaughan was recognized to explain the bill. Chair Moore accepted public comments from: AP Carlton (Attorney), Kevin Trapani (The Red Woods Group), Maria Kingery, (Southern Energy Management), Wynne Coleman (concerned citizen), Stephanie Nieman (B Lab), Mimi Shankin (Avant Group, LLC), Bob Saunders (Chapel Hill Chamber of Commerce), John Goodman (NC Chamber), and Guy Smith (concerned citizen, Cleveland County). Wendy Graf Ray, staff, explained the bill. Discussion and debate. Staff was asked to answer some committee questions for the next meeting. No vote was taken.

Chair Moore adjourned the meeting at 11:50 a.m.

Respectfully submitted:

Representative Tim Moore, Chair

Nancy Garriss, Committee Clerk

AGENDA

House Judiciary Subcommittee C
Wednesday, June 14, 2012
Room 1228/1327 LB

OPENING REMARKS

Representative Tim Moore, Chairman
Judiciary Subcommittee C

AGENDA ITEMS

BILL NO.	SHORT TITLE	SPONSOR
SB 133	Juror Privacy. PCS Title: Modernize Jury List Procedures	Senator Clodfelter
HB 237	2012 Workers' Compensation Amendments	Representative Dollar Representative Rhyne Representative McElraft Representative Folwell
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird

ADJOURNMENT

Corrected Notice Bill added

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 20, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: The following bill has been added: HB237, 2012 Workers' Compensation Amendments. Sponsor: Representative Dollar, Representative Rhyne, Representative McElraft, Representative Folwell. SB 133 will have a PCS with a new title, Modernize Jury List Procedures, and SB 133 will be first on the agenda.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **2 PM** o'clock on **June 19, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

Corrected Notice

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 20, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS: SB 133 will have a PCS with a new title, Modernize Jury List Procedures, and will be first on the agenda.

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **June 19, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 20, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird
SB 133	Juror Privacy.	Senator Clodfelter

Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **9 AM** o'clock on **June 19, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

amendment 1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 132 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) (Sen.) Weiss

moves to amend the bill on page 4, line 42

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"Upon the request of the clerk of superior court and with the agreement ~~between~~ of the clerk of superior court and the senior ~~chief~~ resident superior court judge;";

and

on page 5, line 4, by rewriting the line to read

SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

2012 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☒ Senate Committee Substitute for

HB 237 A BILL TO BE ENTITLED AN ACT PROVIDING THAT THE NORTH CAROLINA RATE BUREAU SHARE WITH THE NORTH CAROLINA INDUSTRIAL COMMISSION INFORMATION ON THE STATUS OF WORKERS' COMPENSATION INSURANCE COVERAGE ON EMPLOYERS IN THIS STATE AND MAKING CLARIFYING, CONFORMING, AND OTHER CHANGES RELATING TO THE WORKERS' COMPENSATION LAWS OF NORTH CAROLINA.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/_____

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

2012 PERMANENT SUBCOMMITTEE REPORT

HOUSE OF REPRESENTATIVES

FOR RECOMMENDING BILLS TO STANDING COMMITTEE OR TO THE FLOOR OF THE HOUSE

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

By Representative(s) T. Moore (Chair) for the Judiciary Subcommittee C.

☐Committee Substitute for

SB 133 A BILL TO BE ENTITLED AN ACT TO ELIMINATE THE REQUIREMENT THAT THE ADDRESS OF EACH QUALIFIED PERSON SELECTED FOR THE JURY LIST APPEAR ON THE LIST FILED WITH THE REGISTER OF DEEDS, IN ORDER TO ALLAY JUROR PRIVACY CONCERNS.

WITH APPROVAL OF STANDING COMMITTEE CHAIR(S) FOR REPORT TO BE MADE DIRECTLY TO THE FLOOR OF THE HOUSE:

Representative Daughtry (Chair) for the Standing Committee on Judiciary.

s/ Daughtry

☒With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

_____ Pursuant to Rule 36(b), the committee substitute bill/resolution is placed on the Calendar of _____. The original resolution is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H 3

HOUSE BILL 237
Senate Commerce Committee Substitute Adopted 6/7/12
Third Edition Engrossed 6/14/12

Short Title: 2012 Workers' Compensation Amendments. (Public)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE NORTH CAROLINA RATE BUREAU SHARE WITH THE NORTH CAROLINA INDUSTRIAL COMMISSION INFORMATION ON THE STATUS OF WORKERS' COMPENSATION INSURANCE COVERAGE ON EMPLOYERS IN THIS STATE AND MAKING CLARIFYING, CONFORMING, AND OTHER CHANGES RELATING TO THE WORKERS' COMPENSATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 58-36-16 reads as rewritten:

"**§ 58-36-16. Bureau to share information with Department of ~~Labor.~~Labor and North Carolina Industrial Commission.**

The Bureau shall provide to the Department of Labor and the North Carolina Industrial Commission information from the Bureau's records indicating each employer's experience rate modifier established for the purpose of setting premium rates for workers' compensation insurance and the name and business address of each employer whose workers' compensation coverage is provided through the assigned-risk pool pursuant to G.S. 58-36-1. Information provided to the Department of Labor and the North Carolina Industrial Commission with respect to experience rate modifiers shall include the name of the employer and the employer's most current intrastate or interstate experience rate modifier. The information provided to the Department and the Commission under this section shall be confidential and not open for public inspection. The Bureau shall be immune from civil liability for ~~erroneous information released by the Bureau~~ releasing information pursuant to this section, even if the information is erroneous, provided ~~that~~ the Bureau acted in good faith and without malicious or wilful intent to harm in releasing the ~~erroneous~~ information."

SECTION 1.(b) Article 36 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-36-17. Bureau to share information with the North Carolina Industrial Commission.**

The Bureau shall provide to the North Carolina Industrial Commission information contained in the Bureau's records indicating the status of workers' compensation insurance coverage on North Carolina employers as reported to the Bureau by the Bureau's member companies. The North Carolina Industrial Commission shall take such steps, including obtaining software or software licenses, as are necessary to be able to receive and process such information from the Bureau. The records provided to the North Carolina Industrial Commission under this section shall be confidential and shall not be public records as that term

is defined in G.S. 132-1. The North Carolina Industrial Commission shall use the information provided pursuant to this section only to carry out its statutory duties and obligations under The North Carolina Workers' Compensation Act. The Bureau shall be immune from civil liability for releasing information pursuant to this section, even if the information is erroneous, provided the Bureau acted in good faith and without malicious or willful intent to harm in releasing the information."

SECTION 2. G.S. 97-25.6 reads as rewritten:

"**§ 97-25.6. Reasonable access to medical information.**

(a) Notwithstanding any provision of G.S. 8-53 to the contrary, and because discovery is limited pursuant to G.S. 97-80, it is the policy of this State to protect the employee's right to a confidential physician-patient relationship while allowing the parties to have reasonable access to all relevant medical information, including medical records, reports, and information necessary to the fair and swift administration and resolution of workers' compensation claims, while limiting unnecessary communications with and administrative requests to health care providers.

(b) As used in this section, "relevant medical information" means any medical record, report, or information that ~~is:~~is any of the following:

(1) ~~restricted~~ Restricted to the particular evaluation, diagnosis, or treatment of the injury or disease for which compensation, including medical compensation, is ~~sought;~~sought.

(2) ~~reasonably~~ Reasonably related to the injury or disease for which the employee claims ~~compensation; or~~compensation.

(3) ~~related~~ Related to an assessment of the employee's ability to return to work as a result of the particular injury or disease.

(c) Relevant medical information shall be requested and provided subject to the following provisions:

(1) Medical records. – An employer is entitled, without the express authorization of the employee, to obtain the employee's medical records containing relevant medical information from the employee's health care providers. In a claim in which the employer is not paying medical compensation to a health care provider from whom the medical records are sought, or in a claim denied pursuant to G.S. 97-18(c), the employer shall provide the employee with contemporaneous written notice of the request for medical records. ~~The~~ Upon the request of the employee, the employer shall provide the employee with a copy of any records received in response to this request within 30 days of its receipt by the employer.

(2) Written communications with health care providers. – An employer may communicate with the employee's authorized health care provider in writing, without the express authorization of the employee, to obtain relevant medical information not available in the employee's medical records. The employer shall provide the employee with contemporaneous written notice of the written communication. The employer may request the following additional information:

a. The diagnosis of the employee's ~~condition;~~condition.

b. The appropriate course of ~~treatment;~~treatment.

c. The anticipated time that the employee will be out of ~~work;~~work.

d. The relationship, if any, of the employee's condition to the ~~employment;~~employment.

e. Work restrictions resulting from the ~~condition;~~condition, including whether the employee is able to return to the employee's employment

with the employer of injury as provided in an attached job description.

f. The kind of work for which the employee may be ~~eligible;~~eligible.

g. The anticipated time the employee will be ~~restricted; and~~restricted.

h. Any permanent impairment as a result of the condition.

The employer shall provide a copy of the health care provider's response to the employee within 10 business days of its receipt by the employer.

(3) Oral communications with health care providers. – An employer may communicate with the employee's authorized health care provider by oral communication to obtain relevant medical information not contained in the employee's medical records, not available through written communication, and not otherwise available to the employer, subject to the following:

a. The employer must give the employee prior notice of the purpose of the intended oral communication and an opportunity for the employee to participate in the oral communication at a mutually convenient time for the employer, employee, and health care provider.

b. The employer shall provide the employee with a summary of the communication with the health care provider within 10 business days of any oral communication in which the employee did not participate.

(d) Additional Information Submitted by the Employer. – Notwithstanding subsection (c) of this section, an employer may submit additional relevant medical information not already contained in the employee's medical records to the employee's authorized health care provider and may communicate in writing with the health care provider about the additional information in accordance with the following procedure:

(1) The employer shall first notify the employee in writing that the employer intends to communicate additional information about the employee to the employee's health care provider. The notice shall include the employer's proposed written communication to the health care provider and the additional information to be submitted.

(2) The employee shall have 10 business days from the postmark or verifiable facsimile or electronic mail either to consent or object to the employer's proposed written communication.

(3) Upon consent of the employee or in the absence of the employee's timely ~~response,~~ objection, the employer may submit the additional information directly to the health care provider.

(4) Upon making a timely objection, the employee may request a protective order to prevent the written communication, in which case the employer shall refrain from communicating with the health care provider until the Commission has ruled upon the employee's request. If the employee does not file with the Industrial Commission a request for a protective order within the time period set forth in subdivision (2) of subsection (d) of this section, the employer may submit the additional information directly to the health care provider. In deciding whether to allow the submission of additional information to the health care provider, in part or in whole, the Commission shall determine whether the proposed written communication and additional information are pertinent to and necessary for the fair and swift administration and resolution of the workers' compensation claim and whether there is an alternative method to discover the information. If the Industrial Commission determines that any party has acted unreasonably by

initiating or objecting to the submission of additional information to the health care provider, the Commission may assess costs associated with any proceeding, including reasonable attorneys' fees and deposition costs, against the offending party.

(e) Any medical records or reports that reflect evaluation, diagnosis, or treatment of the particular injury or disease for which compensation is sought or are reasonably related to the injury or disease for which the employee seeks compensation that are in the possession of a party shall be furnished to the requesting party by the opposing party when requested in writing, except for records or reports generated by a retained expert.

(f) Upon motion by an employee or the health care provider from whom medical records, reports, or information are sought, or with whom oral communication is sought, or upon its own motion, for good cause shown, the Commission may make any order which justice requires to protect an employee, health care provider, or other person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense.

(g) Other forms of communication with a health care provider may be authorized by any of the following:

(1) A valid written authorization voluntarily given and signed by the employee.

(2) An agreement of the parties.

(3) An order of the Industrial Commission issued upon a showing that the information sought is necessary for the administration of the employee's claim and is not otherwise reasonably obtainable under this ~~section.~~section or through other discovery authorized by the rules of the Commission.

(h) The employer may communicate with the health care provider to request medical bills or a response to a pending written request, or about nonsubstantive administrative matters without the express authorization of the employee.

(i) The Commission shall establish ~~annually~~ an appropriate ~~medical~~ fee to compensate health care providers for time spent communicating with the employer or employee. Each party shall bear its own costs for said communication.

(j) No cause of action shall arise and no health care provider shall incur any liability as a result of the release of medical records, reports, or information pursuant to this Article.

(k) For purposes of this section, the term "employer" means the employer, the employer's attorney, and the employer's insurance carrier or third-party administrator; and the term "employee" means the employee, legally appointed guardian, or any attorney representing the employee."

SECTION 3. G.S. 97-26 reads as rewritten:

"§ 97-26. Fees allowed for medical treatment; malpractice of physician.

(a) Fee Schedule. – The Commission shall adopt by rule a schedule of maximum fees for medical compensation, except as provided in subsection (b) of this section, and shall periodically review the schedule and make ~~revisions pursuant to the provisions of this Article.~~revisions.

The fees adopted by the Commission in its schedule shall be adequate to ensure that (i) injured workers are provided the standard of services and care intended by this Chapter, (ii) providers are reimbursed reasonable fees for providing these services, and (iii) medical costs are adequately contained.

~~Prior to adoption of a fee schedule, the Commission shall publish notice of its intent to adopt the schedule in the North Carolina Register and hold a public hearing. The published notice shall include the location, date and time of the public hearing, the proposed effective date of the fee schedule, the period of time during which the Commission will receive written comments on the proposed schedule, and the person to whom comments and questions should be directed. In addition to publication in the North Carolina Register, the notice may be mailed to parties who have requested notice of the fee schedule hearing. The public hearing shall be~~

~~held no earlier than 15 days after the publication of the notice. The Commission shall receive written comments for at least 30 days or until the date of the public hearing, whichever is later, after which the Commission may adopt the fee schedule.~~

The Commission may consider any and all reimbursement systems and plans in establishing its fee schedule, including, but not limited to, the State Health Plan for Teachers and State Employees (hereinafter, "State Plan"), Blue Cross and Blue Shield, and any other private or governmental plans. The Commission may also consider any and all reimbursement methodologies, including, but not limited to, the use of current procedural terminology ("CPT") codes, diagnostic-related groupings ("DRGs"), per diem rates, capitated payments, and resource-based relative-value system ("RBRVS") payments. The Commission may consider statewide fee averages, geographical and community variations in provider costs, and any other factors affecting provider costs.

~~An appeal from a decision of the Commission establishing a fee schedule, by any party aggrieved thereby, shall be to the North Carolina Court of Appeals. The decision of the Commission shall be affirmed if supported by substantial evidence. For the purposes of the appeal, the Commission is a party.~~

(b) Hospital Fees. – Each hospital subject to the provisions of this subsection shall be reimbursed the amount provided for in this subsection unless it has agreed under contract with the insurer, managed care organization, employer (or other payor obligated to reimburse for inpatient hospital services rendered under this Chapter) to accept a different amount or reimbursement methodology.

Except as otherwise provided herein, payment for medical treatment and services rendered to workers' compensation patients by a hospital shall be a reasonable fee determined by the ~~Commission.~~ Commission and adopted by rule. Effective September 16, 2001, through June 30, 2002, the fee shall be the following amount unless the Commission adopts a different fee schedule in accordance with the provisions of this section:

(1) For inpatient hospital services, the amount that the hospital would have received for those services as of June 30, 2001. The payment shall not be more than a maximum of one hundred percent (100%) of the hospital's itemized charges as shown on the UB-92 claim form nor less than the minimum percentage for payment of inpatient DRG claims that was in effect as of June 30, 2001.

(2) For outpatient hospital services and any other services that were reimbursed as a discount off of charges under the State Plan as of June 30, 2001, the amount calculated by the Commission as a percentage of the hospital charges for such services. The percentage applicable to each hospital shall be the percentage used by the Commission to determine outpatient rates for each hospital as of June 30, 2001.

(3) For any other services, a reasonable fee as determined by the Industrial Commission.

~~Notwithstanding any other provisions of law, the Commission's determination of payment rates under this subsection shall:~~

~~(1) Comply with the procedures for adoption of a fee schedule established in G.S. 97-26(a);~~

~~(2) Include publication of the proposed payment rate, and a summary of the data and calculations on which the rate is based at least 90 days before the proposed effective date;~~

~~(3) Be subject to the declaratory ruling provisions of G.S. 150B-4; and~~

~~(4) Be deemed to constitute a final permanent rule under Article 2A of Chapter 150B for purposes of judicial review under Article 4 of that Chapter.~~

The explanation of the fee schedule change that is published pursuant to G.S. 150B-21.2(c)(2) shall include a summary of the data and calculations on which the fee schedule rate is based.

A hospital's itemized charges on the UB-92 claim form for workers' compensation services shall be the same as itemized charges for like services for all other payers.

(c) Maximum Reimbursement for Providers Under Subsection (a). – Each health care provider subject to the provisions of subsection (a) of this section shall be reimbursed the amount specified under the fee schedule unless the provider has agreed under contract with the insurer or managed care organization to accept a different amount or reimbursement methodology. In any instance in which neither the fee schedule nor a contractual fee applies, the maximum reimbursement to which a provider under subsection (a) is entitled under this Article is the usual, customary, and reasonable charge for the service or treatment rendered. In no event shall a provider under subsection (a) charge more than its usual fee for the service or treatment rendered.

(d) Information to Commission. – Each health care provider seeking reimbursement for medical compensation under this Article shall provide the Commission information requested by the Commission for the development of fee schedules and the determination of appropriate reimbursement.

(e) When Charges Submitted. – Health care providers shall submit charges to the insurer or managed care organization within 30 days of treatment, within 30 days after the end of the month during which multiple treatments were provided, or within such other reasonable period of time as allowed by the Commission. If an insurer or managed care organization disputes a portion of a health care provider's bill, it shall pay the uncontested portion of the bill and shall resolve disputes regarding the balance of the charges in accordance with this Article or its contractual arrangement.

(f) Repeating Diagnostic Tests. – A health care provider shall not authorize a diagnostic test previously conducted by another provider, unless the health care provider has reasonable grounds to believe a change in patient condition may have occurred or the quality of the prior test is doubted. The Commission may adopt rules establishing reasonable requirements for reports and records to be made available to other health care providers to prevent unnecessary duplication of tests and examinations. A health care provider that violates this subsection shall not be reimbursed for the costs associated with administering or analyzing the test.

(g) Direct Reimbursement. – The Commission may adopt rules to allow insurers and managed care organizations to review and reimburse charges for medical compensation without submitting the charges to the Commission for review and approval.

(g1) Administrative Simplification. – The applicable administrative standards for code sets, identifiers, formats, and electronic transactions to be used in processing electronic medical bills under this Article shall comply with 45 C.F.R. § 162. The Commission shall adopt rules to require electronic medical billing and payment processes, to standardize the necessary medical documentation for billing adjudication, to provide for effective dates and compliance, and for further implementation of this subsection.

(h) Malpractice. – The employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident, and shall be compensated for as such.

(i) Resolution of Dispute. – The employee or health care provider may apply to the Commission by motion or for a hearing to resolve any dispute regarding the payment of charges for medical compensation in accordance with this Article."

SECTION 4. G.S. 97-26.1 reads as rewritten:

"§ 97-26.1. Fees for medical records and reports; expert ~~witnesses.~~witnesses; communications with health care providers.

The Commission may establish maximum fees for the following when related to a claim under this Article: (i) the searching, handling, copying, and mailing of medical records, (ii) the preparation of medical reports and narratives, ~~and~~ (iii) the presentation of expert testimony in a Commission ~~proceeding.~~proceeding, and (iv) the time spent communicating with the employer or employee pursuant to G.S. 97-25.6(i)."

SECTION 5. G.S. 97-27(b) reads as rewritten:

"(b) In any case arising under this Article in which the employee is dissatisfied with the percentage of permanent disability as provided by G.S. 97-31 and determined by the authorized health care provider, the employee is entitled to have another examination solely on the percentage of permanent disability provided by a duly qualified physician of the employee's choosing who is licensed to practice in North Carolina, or licensed in another state if agreed to by the parties or ordered by the Commission, and designated by the employee. That physician shall be paid by the employer in the same manner as health care providers designated by the employer or the Industrial Commission are paid. The Industrial Commission must either disregard or give less weight to the opinions of the duly qualified physician chosen by the employee pursuant to this subsection on issues outside the scope of the G.S. 97-27(b) examination. No fact that is communicated to or otherwise learned by any physician who attended or examined the employee, or who was present at any examination, shall be privileged with respect to a claim before the Industrial Commission. Provided, however, that all travel expenses incurred in obtaining the examination shall be paid by the employee."

SECTION 6. G.S. 97-29(b) reads as rewritten:

"(b) When a claim is compensable pursuant to G.S. 97-18(b), paid without prejudice pursuant to G.S. 97-18(d), agreed by the parties pursuant to G.S. 97-82, or when a claim has been deemed compensable following a hearing pursuant to G.S. 97-84, ~~an employee proves by a preponderance of the evidence that the employee is unable to earn the same wages the employee had earned before the injury, either in the same or other employment,~~ the employee qualifies for temporary total disability subject to the limitations noted herein. The employee shall not be entitled to compensation pursuant to this subsection greater than 500 weeks from the date of first disability unless the employee qualifies for extended compensation under subsection (c) of this section."

SECTION 7. G.S. 97-32.2(a) reads as rewritten:

"(a) In a compensable claim, the employer may engage vocational rehabilitation services at any point during a claim, regardless of whether the employee has reached maximum medical improvement to include, among other services, a one-time assessment of the employee's vocational ~~potential.~~ potential, except vocational rehabilitation services may not be required if the employee is receiving benefits pursuant to G.S. 97-29(c) or G.S. 97-29(d). If the employee (i) has not returned to work or (ii) has returned to work earning less than seventy-five percent (75%) of the employee's average weekly wages and is receiving benefits pursuant to G.S. 97-30, the employee may request vocational rehabilitation services, including education and retraining in the North Carolina community college or university systems so long as the education and retraining are reasonably likely to substantially increase the employee's wage-earning capacity following completion of the education or retraining program. Provided, however, the seventy-five percent (75%) threshold is for the purposes of qualification for vocational rehabilitation benefits only and shall not impact a decision as to whether a job is suitable per G.S. 97-2(22). The expense of vocational rehabilitation services provided pursuant to this section shall be borne by the employer in the same manner as medical compensation."

SECTION 8.(a) Creation and Membership. – The Joint Legislative Committee on Workers' Compensation Insurance Coverage Compliance and Fraud Prevention and Detection

(Committee) is created. The Committee shall consist of eight members to be appointed as follows:

(1) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(2) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.

SECTION 8.(b) Scope of Review. – The Committee shall:

(1) Review the statutes relating to workers' compensation in the State to determine whether there are sufficient safeguards to ensure that employers comply with statutory requirements related to workers' compensation insurance coverage and to prevent and detect fraudulent claims before the Industrial Commission.

(2) Examine the measures taken by the Industrial Commission relating to compliance with statutory requirements related to workers' compensation insurance coverage and to fraudulent claims to determine whether the Commission is using effectively existing powers and resources relating to employer compliance and the prevention of claims fraud.

(3) Recommend any statutory changes necessary to improve or enhance the Industrial Commission's efforts and effectiveness in securing employer compliance with statutory requirements related to workers' compensation insurance coverage and to the prevention and detection of fraudulent workers' compensation claims.

(4) Study any other matter related to the integrity of the workers' compensation system that the Committee deems necessary to accomplish its purpose.

SECTION 8.(c) A vacancy shall be filled within 30 days by the officer who made the original appointment. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Committee. The Committee shall meet at least once per quarter, except while the General Assembly is in regular session, and may meet at other times upon the joint call of the cochairs. A quorum of the Committee is five members. No action may be taken except by a majority vote at a meeting at which a quorum is present.

SECTION 8.(d) While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee.

SECTION 8.(e) Additional Powers. – The Committee, while in discharge of official duties, shall have access to any paper or document, and may compel the attendance of any State official or employee before the Committee or secure any evidence under G.S. 120-19. In addition, G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Committee as if it were a joint committee of the General Assembly.

SECTION 8.(f) Reports to Committee. – Whenever a State agency is required by law to report to the General Assembly or to any of its permanent, study, or oversight committees or subcommittees on matters affecting the workforce development system, the Department shall transmit a copy of the report to the cochairs of the Committee.

SECTION 8.(g) Reporting/Termination. – The Committee shall report to the 2013 General Assembly on legislation related to the integrity of the workers' compensation system,

including statutory changes to strengthen the prevention and detection of workers' compensation fraud. The Committee shall terminate upon submission of its final report to the 2013 General Assembly.

SECTION 9. Notwithstanding G.S. 97-31.1, this act is effective when it becomes law. Section 2 of this act applies to claims pending on or after that date. Section 5 of this act applies to travel expenses incurred for examinations under G.S. 97-27(b) on or after that date. Section 6 and Section 7 of this act apply to claims arising on or after June 24, 2011.

Comm -

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 133
PROPOSED HOUSE COMMITTEE SUBSTITUTE S133-PCS85308-TJ-24

Short Title: Modernize Jury List Procedures. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE OBSOLETE PROVISIONS FROM, AND MAKE CLARIFYING CHANGES TO, THE LAWS GOVERNING PREPARATION AND STORAGE OF JURY LISTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2 reads as rewritten:

"**§ 9-2. Preparation of master jury list; sources of names.**

(a) It shall be the duty of the jury commission ~~on July 1 of~~ during every odd-numbered year to prepare a master list of prospective jurors qualified under this Chapter to serve in the biennium beginning on January 1 of the next year. Instead of providing a master list for an entire biennium, the commission may prepare a master list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the master list, the jury commission shall use the list of registered voters and persons with drivers' license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. ~~The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121(a).~~ The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c),(d) Repealed by Session Laws 2003-226, s. 7(d), effective January 1, 2004.

(e) The jury commission shall merge the entire list of names of each source used and randomly select the desired number of names to form the ~~jury~~ master list.

(f) The ~~jury~~ master list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the ~~jury~~ master list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous year but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the ~~jury~~ master list.

(g) Repealed by Session Laws 2003-226, s. 7(d), effective January 1, 2004.

(h) As used in this section "random" or "randomly" refers to a method of selection that results in each name on a list having an equal opportunity to be selected.

(i) To facilitate random selection of jurors, all the names on the master list may be sorted into random order before the first panel is drawn. Thereafter, names may be selected sequentially from the randomized list without further randomization, except as required by G.S. 15A-1214.

(j) The procedure for performing the preparation of the master list shall be in writing, adopted by the jury commission, and kept available for public inspection in the office of the clerk of court. The procedure must effectively preserve the authorized grounds for disqualification, the right of public access to the master list of prospective jurors as provided by G.S. 9-4, and the time sequence for drawing and summoning a jury panel.

(k) In counties utilizing electronic data processing equipment, the functions of preparing and maintaining custody of the master list of prospective jurors, the procedure for drawing and summoning panels of jurors, and the procedure for maintaining records of names of jurors who have served, been excused or disqualified, or whose service has been deferred may be performed by this equipment, except that decisions as to mental or physical competence of prospective jurors shall continue to be made by jury commissioners."

SECTION 2. G.S. 9-2.1 is repealed.

SECTION 3. G.S. 9-3 reads as rewritten:

"**§ 9-3. Qualifications of prospective jurors.**

All persons are qualified to serve as jurors and to be included on the master jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 4. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of alphabetized ~~list.~~ list; access to list.**

(a) As the master jury list is prepared, the name ~~and address~~ of each qualified person selected for the list shall be recorded and alphabetically ~~arranged, written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county.~~ arranged. The alphabetized list shall be maintained in ~~filed with~~ the office of the clerk of court, ~~register of deeds of the county,~~ together with a statement of the sources used and procedures followed in preparing the list. The alphabetized list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The clerk of court may elect to store an electronic copy of the alphabetized ~~jury~~ list for the county.

(b) Public access to juror information shall be limited to the alphabetized list of the names. The addresses of prospective jurors are confidential and not subject to disclosure without an order of the court."

SECTION 5. G.S. 9-5 reads as rewritten:

"**§ 9-5. Procedure for drawing panel of jurors.~~jurors; numbers drawn.~~**

~~The board of county commissioners in each county shall provide the clerk of superior court with a jury box, the construction and dimensions of which shall be prescribed by the administrative officer of the courts. At least 30 days prior to January 1 of any year for which a list of prospective jurors has been prepared, a number of discs, squares, counters or markers equal to the number of names on the jury list shall be placed in the jury box. The discs, squares, counters, or markers shall be uniform in size, weight, and appearance, and may be made of any suitable material. They shall be numbered consecutively to correspond with the numbers on the jury list. The jury box shall be of sufficient size to hold the discs, squares, counters or markers so that they may be easily shaken and mixed, and the box shall have a hinged lid through which~~

~~the discs, squares, counters or markers can be drawn. The lid shall have a lock, the key to which shall be kept by the clerk of superior court.~~

At least 30 days prior to any session or sessions of superior or district court requiring a jury, the clerk of superior court or ~~his~~ assistant or deputy clerk ~~shall, in public, after thoroughly shaking the box, draw therefrom the number of discs, squares, counters, or markers~~ shall prepare or have electronically prepared a randomized list of names from the master jury list equal to the number of jurors required for the session or sessions scheduled. The clerk of superior court may decrease the number of randomized names to account for the addition of names of previously selected jurors whose service has been deferred to this session. For each week of a superior court session, the senior resident superior court judge for the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located shall specify the number of jurors to be drawn. For each week of a district court jury session, the chief district judge of the district court district in which the county is located shall specify the number of jurors to be drawn. Pooling of jurors between or among concurrent sessions of various courts is authorized in the discretion of the senior regular resident superior court judge. When pooling is utilized, the senior regular resident superior court judge, after consultation with the chief district judge when a district court jury is required, shall specify the total number of jurors to be drawn for such concurrent sessions. When grand jurors are needed, at least nine additional ~~numbers~~ names shall be drawn.

~~As the discs, squares, counters, or markers are drawn, they shall be separately stored by the clerk until a new jury list is prepared.~~

The clerk of superior court shall either (i) prepare and issue the summonses or (ii) deliver the printed summonses or the list of ~~numbers drawn from the jury box to the register of deeds, who shall match the numbers received with the numbers on the jury list. The register of deeds shall within three days thereafter notify the sheriff to summon for jury duty the persons on the jury list whose numbers are thus matched.~~ names and addresses of jurors to the sheriff, who shall issue the summonses in accordance with the provisions of G.S. 9-10(a). Jurors who serve each week shall be discharged at the close of the weekly session or sessions, unless actually engaged in the trial of a case, and then they shall not be discharged until their service in that case is completed."

SECTION 6. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk ~~within 10 days shall so notify the register of deeds, who shall note the excuse on the juror's card and file it~~ shall keep a record of excuses separate from the master ~~separately from the~~ jury list."

SECTION 7. G.S. 9-6.1 reads as rewritten:

"**§ 9-6.1. Requests to be excused.**

(a) Any person summoned as a juror who is 72 years or older and who wishes to be excused, deferred, or exempted may make the request without appearing in person by filing a signed statement of the ground of the request with the chief district court judge of that district, or the district court judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), at ~~anytime~~ any time five business days before the date upon which the person is summoned to appear.

(b) Any person summoned as a juror who has a disability that could interfere with the person's ability to serve as a juror and who wishes to be excused, deferred, or exempted may make the request without appearing in person by filing a signed statement of the ground of the request, including a brief explanation of the disability that interferes with the person's ability to serve as a juror, with the chief district court judge of that district, or the district court judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), at any time five business days before the date upon which the person is summoned to appear. Upon request of the court, medical documentation of any disability may be submitted. Any

privileged medical information or protected health information described in this section shall be confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public.

(c) A person may request either a temporary or permanent exemption under this section, and the judge or trial court administrator may accept or reject either in the exercise of discretion conferred by G.S. 9-6(b), including the substitution of a temporary exemption for a requested permanent exemption. In the case of supplemental jurors summoned under G.S. 9-11, notice may be given when summoned. In case the chief district court judge, or the judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), rejects the request for exemption, the prospective juror shall be immediately notified by the trial court administrator or the clerk of court by telephone, letter, or personally."

SECTION 8. G.S. 9-7 reads as rewritten:

"**§ 9-7. ~~Removal~~ Notation on master jury list of names of jurors who have served;~~served from jury list;~~ retention.**

~~As persons are summoned for jury service, the cards upon which their names appear shall be withdrawn from the jury list and filed separately. The date for which each juror serves shall be noted on his card.~~

~~All cards removed from the jury list because of service, or having been excused from service, or because of disqualification, shall be retained for reference in compiling the next jury list. When the succeeding list has been prepared, the list of persons who have served shall be retained for a period of two years.~~ The names of persons summoned for jury service and the date or dates on which each person served shall be noted on the master jury list. This information shall be retained for two years, and persons shall be exempt from jury service for a period of two years from the date on which they were discharged from their prior service."

SECTION 9. G.S. 9-10(a) reads as rewritten:

"**§ 9-10. Summons to jurors.**

(a) The ~~register of deeds~~ clerk of court ~~shall, within three days after the receipt of numbers drawn,~~ shall serve the summons by first-class mail, or shall deliver either printed summonses or the list of the panel of prospective jurors to the sheriff of the county, who shall summon the persons named therein. The summons shall be served personally, or by leaving a copy thereof at the place of residence of the juror, or by telephone or first-class mail, at least 15 days before the session of court for which the juror is summoned. Service by telephone, or by first-class mail if mailed to the correct current address of the juror on or before the fifteenth day before the day the court convenes, shall be valid and binding on the person served, and he shall be bound to appear in the same manner as if personally served. The summons shall contain information as to the time, place, and authority before whom applications for excuses from jury service may be heard."

SECTION 10. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

"**§ 9-7.1. Trial court administrator may assist clerk with performance of duties.**

Upon the request of the clerk of superior court and with the agreement of the clerk of superior court and the senior resident superior court judge, the duties and responsibilities of the clerk of superior court under this Article may be assigned to the trial court administrator pursuant to G.S. 7A-356."

SECTION 11. G.S. 9-11(a) reads as rewritten:

"(a) If necessary, the court may, without using the jury list, order the sheriff to summon from day to day additional jurors to supplement the original venire. Jurors so summoned shall have the same qualifications and be subject to the same challenges as jurors selected for the regular jury list. If the presiding judge finds that service of summons by the sheriff is not suitable because of his direct or indirect interest in the action to be tried, the judge may appoint

some suitable person in place of the sheriff to summon supplemental jurors. The clerk of superior court shall ~~furnish the register of deeds~~keep a record of the names of those additional jurors who are so summoned and who report for jury service."

SECTION 12. G.S. 130A-121(a) is repealed.

SECTION 13. This act is effective when it becomes law.

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SENATE BILL 133:
Modernize Jury List Procedures

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 19, 2012
Introduced by:	Sen. Clodfelter	**Prepared by:**	Janice Paul Committee Counsel
Analysis of:	PCS to First Edition S133-CSTJ-24		

SUMMARY: ***The PCS to Senate Bill 133 would eliminate obsolete provisions from, and make clarifying changes to, the procedures relating to the preparation of jury lists and the drawing of jury panels.***

BACKGROUND: Some provisions of North Carolina's current statutory plan for the compilation of a jury list and the selection of jurors date back to 1806. The jury selection system is now performed electronically in almost all of North Carolina's counties. The PCS to Senate Bill 133 would authorize the jury list procedures currently used throughout the state.

Article 1 of Chapter 9 sets forth the procedures for the objective and systematic selection and drawing of jurors. In every county, a jury commission consisting of three appointed members prepares a list of prospective jurors to serve in the biennium starting January 1 of the following year. The jury list (or master list) is normally compiled from lists of registered voters and licensed drivers, but the jury commission is not limited to these sources. An alphabetized list is also prepared and made available for public inspection. Potential jurors (the jury "venire") are randomly selected from the master list to report for jury service. From these individuals, the "venire panel" or "jury array" may be selected at random and called to a courtroom for questioning, or juror "voir dire," and ultimately either excused by the court or the attorneys, or empanelled as jurors at trial (the "petit jury").

BILL ANALYSIS:

Section 1 of the PCS amends G.S. 9-2 as follows: Current G.S. 9-2(a) provides that the jury commissioners must prepare "the jury list" on July 1 of every odd-numbered year. The PCS substitutes the term "master list" for "jury list," and provides that the master list must be prepared during every odd-numbered year, deleting the requirement that the list be prepared on July 1st. The PCS also removes the provision referencing G.S. 130A-121(a), which the PCS would repeal in Section 12 as obsolete.

Section 2 repeals G.S. 9-2.1. Currently, G.S. 9-2.1 makes special provisions for preparing and maintaining jury lists, drawing and summoning panels of jurors, and maintaining jury records in counties with access to electronic data processing equipment. It also addresses the process for the random selection of jurors. These provisions would be incorporated into the proposed revisions to G.S. 9-2 in Section 1 of the PCS.

Current G.S. 9-2.1 also addresses issues of public access to information of prospective jurors, and cross-references current G.S. 9-4. The public access provisions would be clarified in the revisions to G.S. 9-4 in Section 4 of the PCS.

Section 3 makes a conforming change to G.S. 9-3.

Section 4 amends G.S. 9-4 by clarifying references to the "master list" and the "alphabetized list." The PCS includes from the current G.S. 9-2.1 the provision that public access to juror information shall be limited to the alphabetized list of the names. The PCS also incorporates recent amendments to G.S. 9-4 made in S.L. 2012-18 (HB 707).

Section 5 of the PCS eliminates obsolete provisions from G.S. 9-5. The PCS also modernizes the current law by allowing the clerk of superior court to decrease the number of randomized names under certain conditions, and authorizing the clerk either to print and mail the juror summonses, or to provide the necessary information to the sheriff, who will issue the summonses.

Section 6 eliminates references in G.S. 9-6(e) to the register of deeds.

Section 7 makes a technical change to G.S. 9-6.1. It also adds a provision that confidential health information of a juror shall be confidential.

Section 8 and 9 modernize G.S. 9-7 and G.S. 9-10(a)

Section 10 of the PCS creates a new G.S. 9-7.1 to authorize the trial court administrator to perform the duties of the clerk under Article 1 of Chapter 9 of the General Statutes, if the clerk of superior court and the senior resident superior court judge agree.

Section 11 makes a conforming change to G.S. 9-11(a) by deleting the reference to the register of deeds.

Section 12 repeals G.S. 130A-121(a) as obsolete.

EFFECTIVE DATE: This act is effective when it becomes law.

S133-SMTJ-78(CSTJ-24) v1

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 133
PROPOSED HOUSE COMMITTEE SUBSTITUTE S133-CSTJ-24 [v.8]

6/19/2012 8:27:57 PM

Short Title: Modernize Jury List Procedures. (Public)

Sponsors:

Referred to:

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE OBSOLETE PROVISIONS FROM, AND MAKE CLARIFYING CHANGES TO, THE LAWS GOVERNING PREPARATION AND STORAGE OF JURY LISTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-2 reads as rewritten:

"**§ 9-2. Preparation of master jury list; sources of names.**

(a) It shall be the duty of the jury commission ~~on July 1 of~~ during every odd-numbered year to prepare a master list of prospective jurors qualified under this Chapter to serve in the biennium beginning on January 1 of the next year. Instead of providing a master list for an entire biennium, the commission may prepare a master list each year if the senior regular resident superior court judge requests in writing that it do so.

(b) In preparing the master list, the jury commission shall use the list of registered voters and persons with drivers license records supplied to the county by the Commissioner of Motor Vehicles pursuant to G.S. 20-43.4. ~~The commission shall remove from the list the names of those residents of the county who are recently deceased, which shall be supplied to the commission by the State Registrar under G.S. 130A-121(a).~~ The commission may use fewer than all the names from the list if it uses a random method of selection. The commission may use other sources of names deemed by it to be reliable.

(c),(d) Repealed by Session Laws 2003-226, s. 7(d), effective January 1, 2004.

(e) The jury commission shall merge the entire list of names of each source used and randomly select the desired number of names to form the ~~jury~~ master list.

(f) The ~~jury~~ master list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous biennium, or, if an annual list is being prepared as requested under subsection (a) of this section the ~~jury~~ master list shall contain not less than one and one-quarter times and not more than three times as many names as were drawn for jury duty in all courts in the county during the previous year but in no event shall the list include fewer than 500 names, except that in counties in which a different panel of jurors is selected for each day of the week, there is no limit to the number of names that may be placed on the ~~jury~~ master list.

(g) Repealed by Session Laws 2003-226, s. 7(d), effective January 1, 2004.

(h) As used in this section "random" or "randomly" refers to a method of selection that results in each name on a list having an equal opportunity to be selected.

(i) To facilitate random selection of jurors, all the names on the master list may be sorted into random order before the first panel is drawn. Thereafter, names may be selected sequentially from the randomized list without further randomization, except as required by G.S. 15A-1214.

(j) The procedure for performing the preparation of the master list shall be in writing, adopted by the jury commission, and kept available for public inspection in the office of the clerk of court. The procedure must effectively preserve the authorized grounds for disqualification, the right of public access to the master list of prospective jurors as provided by G.S. 9-4, and the time sequence for drawing and summoning a jury panel.

(k) In counties utilizing electronic data processing equipment, the functions of preparing and maintaining custody of the master list of prospective jurors, the procedure for drawing and summoning panels of jurors, and the procedure for maintaining records of names of jurors who have served, been excused or disqualified, or whose service has been deferred, may be performed by this equipment, except that decisions as to mental or physical competence of prospective jurors shall continue to be made by jury commissioners."

SECTION 2. G.S. 9-2.1 is repealed.

SECTION 3. G.S. 9-3 reads as rewritten:

"§ 9-3. Qualifications of prospective jurors.

All persons are qualified to serve as jurors and to be included on the master jury list who are citizens of the State and residents of the county, who have not served as jurors during the preceding two years, who are 18 years of age or over, who are physically and mentally competent, who can understand the English language, who have not been convicted of a felony or pleaded guilty or nolo contendere to an indictment charging a felony (or if convicted of a felony or having pleaded guilty or nolo contendere to an indictment charging a felony have had their citizenship restored pursuant to law), and who have not been adjudged non compos mentis. Persons not qualified under this section are subject to challenge for cause."

SECTION 4. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of alphabetized list; access to list.**

(a) As the master ~~jury~~ list is prepared, the name ~~and address~~ of each qualified person selected for the list shall be recorded and alphabetically arranged, ~~written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county.~~ The alphabetized list shall be maintained in ~~filed with~~ the office of the clerk of court, ~~register of deeds of the county,~~ together with a statement of the sources used and procedures followed in preparing the list. The alphabetized list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The clerk of court may elect to store an electronic copy of the alphabetized ~~jury~~ list for the county.

(b) Public access to juror information shall be limited to the alphabetized list of the names. The addresses of prospective jurors are confidential and not subject to disclosure without an order of the court."

SECTION 5. G.S. 9-5 reads as rewritten:

"**§ 9-5. Procedure for drawing panel of jurors.~~jurors; numbers drawn.~~**

~~The board of county commissioners in each county shall provide the clerk of superior court with a jury box, the construction and dimensions of which shall be prescribed by the administrative officer of the courts. At least 30 days prior to January 1 of any year for which a list of prospective jurors has been prepared, a number of discs, squares, counters or markers equal to the number of names on the jury list shall be placed in the jury box. The discs, squares, counters, or markers shall be uniform in size, weight, and appearance, and may be made of any suitable material. They shall be numbered consecutively to correspond with the numbers on the jury list. The jury box shall be of sufficient size to hold the discs, squares, counters or markers so that they may be easily shaken and mixed, and the box shall have a hinged lid through which~~

~~the dises, squares, counters or markers can be drawn. The lid shall have a lock, the key to which shall be kept by the clerk of superior court.~~

At least 30 days prior to any session or sessions of superior or district court requiring a jury, the clerk of superior court or ~~his~~ assistant or deputy clerk ~~shall, in public, after thoroughly shaking the box, draw therefrom the number of dises, squares, counters, or markers~~ shall prepare or have electronically prepared a randomized list of names from the master jury list equal to the number of jurors required for the session or sessions scheduled. The clerk of superior court may decrease the number of randomized names to account for the addition of names of previously selected jurors whose service has been deferred to this session. For each week of a superior court session, the senior resident superior court judge for the district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located shall specify the number of jurors to be drawn. For each week of a district court jury session, the chief district judge of the district court district in which the county is located shall specify the number of jurors to be drawn. Pooling of jurors between or among concurrent sessions of various courts is authorized in the discretion of the senior regular resident superior court judge. When pooling is utilized, the senior regular resident superior court judge, after consultation with the chief district judge when a district court jury is required, shall specify the total number of jurors to be drawn for such concurrent sessions. When grand jurors are needed, at least nine additional ~~numbers~~ names shall be drawn.

~~As the dises, squares, counters, or markers are drawn, they shall be separately stored by the clerk until a new jury list is prepared.~~

The clerk of superior court shall either (i) prepare and issue the summonses; or (ii) deliver the printed summonses or the list of ~~numbers drawn from the jury box to the register of deeds, who shall match the numbers received with the numbers on the jury list. The register of deeds shall within three days thereafter notify the sheriff to summon for jury duty the persons on the jury list whose numbers are thus matched.~~names and addresses of jurors to the sheriff, who shall issue the summonses in accordance with the provisions of G.S. 9-10(a). Jurors who serve each week shall be discharged at the close of the weekly session or sessions, unless actually engaged in the trial of a case, and then they shall not be discharged until their service in that case is completed."

SECTION 6. G.S. 9-6(e) reads as rewritten:

"(e) The judge shall inform the clerk of superior court of persons excused under this section, and the clerk ~~within 10 days shall so notify the register of deeds, who shall note the excuse on the juror's card and file it~~ shall keep a record of excuses separate from the master ~~separately from the~~ jury list."

SECTION 7. G.S. 9-6.1 reads as rewritten:

§ 9-6.1. Requests to be excused.

(a) Any person summoned as a juror who is 72 years or older and who wishes to be excused, deferred, or exempted may make the request without appearing in person by filing a signed statement of the ground of the request with the chief district court judge of that district, or the district court judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), at ~~anytime~~ any time five business days before the date upon which the person is summoned to appear.

(b) Any person summoned as a juror who has a disability that could interfere with the person's ability to serve as a juror and who wishes to be excused, deferred, or exempted may make the request without appearing in person by filing a signed statement of the ground of the request, including a brief explanation of the disability that interferes with the person's ability to serve as a juror, with the chief district court judge of that district, or the district court judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), at any time five business days before the date upon which the person is summoned to appear. Upon request of the court, medical documentation of any disability may be submitted. Any

privileged medical information or protected health information described in this section shall be confidential and shall be exempt from the provisions of Chapter 132 of the General Statutes or any other provision requiring information and records held by State agencies to be made public or accessible to the public."

(c) A person may request either a temporary or permanent exemption under this section, and the judge or trial court administrator may accept or reject either in the exercise of discretion conferred by G.S. 9-6(b), including the substitution of a temporary exemption for a requested permanent exemption. In the case of supplemental jurors summoned under G.S. 9-11, notice may be given when summoned. In case the chief district court judge, or the judge or trial court administrator designated by the chief district court judge pursuant to G.S. 9-6(b), rejects the request for exemption, the prospective juror shall be immediately notified by the trial court administrator or the clerk of court by telephone, letter, or personally."

SECTION 8. G.S. 9-7 reads as rewritten:

"**§ 9-7. ~~Removal~~ Notation on master jury list of names of jurors who have served;~~served from jury list;~~ retention.**

~~As persons are summoned for jury service, the cards upon which their names appear shall be withdrawn from the jury list and filed separately. The date for which each juror serves shall be noted on his card.~~

~~All cards removed from the jury list because of service, or having been excused from service, or because of disqualification, shall be retained for reference in compiling the next jury list. When the succeeding list has been prepared, the list of persons who have served shall be retained for a period of two years.~~ The names of persons summoned for jury service and the date or dates on which each person served shall be noted on the master jury list. This information shall be retained for two years, and persons shall be exempt from jury service for a period of two years from the date on which they were discharged from their prior service."

SECTION 9. G.S. 9-10(a) reads as rewritten:

"**§ 9-10. Summons to jurors.**

(a) The ~~register of deeds~~ clerk of court ~~shall, within three days after the receipt of numbers drawn,~~ shall serve the summons by first-class mail, or shall deliver either printed summonses or the list of the panel of prospective jurors to the sheriff of the county, who shall summon the persons named therein. The summons shall be served personally, or by leaving a copy thereof at the place of residence of the juror, or by telephone or first-class mail, at least 15 days before the session of court for which the juror is summoned. Service by telephone, or by first-class mail if mailed to the correct current address of the juror on or before the fifteenth day before the day the court convenes, shall be valid and binding on the person served, and he shall be bound to appear in the same manner as if personally served. The summons shall contain information as to the time, place, and authority before whom applications for excuses from jury service may be heard."

SECTION 10. Article 1 of Chapter 9 of the General Statutes is amended by adding a new section to read:

""**§ 9-7.1 Trial court administrator may assist clerk with performance of duties.**

Upon agreement of the clerk of superior court and the senior resident superior court judge, the duties and responsibilities of the clerk of superior court under this Article may be assigned to the trial court administrator pursuant to G.S. 7A-356."

SECTION 11. G.S. 9-11(a) reads as rewritten:

(a) If necessary, the court may, without using the jury list, order the sheriff to summon from day to day additional jurors to supplement the original venire. Jurors so summoned shall have the same qualifications and be subject to the same challenges as jurors selected for the regular jury list. If the presiding judge finds that service of summons by the sheriff is not suitable because of his direct or indirect interest in the action to be tried, the judge may appoint some suitable person in place of the sheriff to summon supplemental jurors. The clerk of

superior court shall ~~furnish the register of deeds~~ keep a record of the names of those additional jurors who are so summoned and who report for jury service."

SECTION 12. G.S. 130A-121(a) is repealed.

SECTION 13. This act is effective when it becomes law.

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SENATE BILL 133

Short Title:	Juror Privacy.	(Public)
Sponsors:	Senators Clodfelter; and Jones.	
Referred to:	Judiciary I.	

February 28, 2011

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE REQUIREMENT THAT THE ADDRESS OF EACH QUALIFIED PERSON SELECTED FOR THE JURY LIST APPEAR ON THE LIST FILED WITH THE REGISTER OF DEEDS, IN ORDER TO ALLAY JUROR PRIVACY CONCERNS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-4 reads as rewritten:

"**§ 9-4. Preparation and custody of list.**

As the jury list is prepared, the name ~~and address~~ of each qualified person selected for the list shall be written on a separate card. The cards shall then be alphabetized and permanently numbered, the numbers running consecutively with a different number on each card. These cards shall constitute the jury list for the county. They shall be filed with the register of deeds of the county, together with a statement of the sources used and procedures followed in preparing the list. The list shall be kept under lock and key, but shall be available for public inspection during regular office hours. The register of deeds may elect to store an electronic copy of the jury list for the county."

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

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SENATE BILL 26:
North Carolina Benefit Corporation Act

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 20, 2012
Introduced by:	Sens. Vaughan, Stevens, Kinnaird	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Third Edition S26-CSSU-35		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 26 would establish the North Carolina Benefit Corporation Act. The act authorizes the creation of a benefit corporation which must include within its corporate purposes a general public benefit that has a material positive impact on society and the environment. A benefit corporation may also include one or more specific public benefit purposes in addition to its general public benefit. The benefit corporation must appoint an independent benefits director and prepare an annual benefit report, as provided by the act. The act also authorizes a right of action against the directors of the corporation to enforce the directors' duties under the act.***

BILL ANALYSIS:

Section 1 of the PCS enacts a new Article 18 in Chapter 55 of the General Statutes, which enacts the North Carolina Benefit Corporation Act.

Part 1. Preliminary Provisions

This part of the act authorizes the creation of benefit corporations in North Carolina. A benefit corporation is a domestic corporation that elects to become subject to the requirements of the act. All other provisions of the Business Corporation Act apply to benefit corporations as well. Part 1 also includes the definitions section.

A benefit corporation is not entitled to claim a property tax exemption.

Part 2. Adoption and Change of Status

This part of the act describes the method by which a corporation may incorporate as a benefit corporation or transition to benefit corporation status. The transition, conversion, merger, or share exchange of an existing corporation requires an affirmative vote of at least 66 2/3% of the outstanding shares of each class or series of stock.

In addition, a benefit corporation can terminate its status by amending its articles of incorporation to delete the provisions identifying it as a benefit corporation. The termination also must be adopted by a vote of 66 2/3% of the outstanding shares.

Part 3. Corporate Purposes.

A benefit corporation must have as one of its corporate purposes the creation of a general public benefit, which is defined as a "material positive impact on society and the environment, taken as a whole, as measured by an independent third-party standard, from the business and operations of a benefit corporation."

A benefit corporation may include as a corporate purpose one or more specific public benefit purposes in addition to its general public benefit. Specific public benefit purposes include:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond creation of jobs in the normal course of business.
- Preserving or improving the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a public benefit purpose.

The benefit corporation must provide notice to the public and its shareholders of its status by including the words "benefit corporation" in its name, and by including a statement in its articles of incorporation and on each share certificate stating that it has a corporate purpose of creating a public benefit, which is not necessarily compatible with maximizing profits.

Part 4. Accountability.

This part establishes the standards of conduct for directors. Benefit corporation directors are required to consider the effects of any action or decision not to act upon the following:

- Shareholders of the benefit corporation.
- Employees of the corporation, it subsidiaries and suppliers.
- Customers, to the extent they are beneficiaries of the general or specific purposes.
- The local community and society.
- The local and global environment.
- The short and long-term interests of the benefit corporation.
- The ability of the benefit corporation to accomplish its general and any specific purposes.

Directors are not required to give priority to any of the interests or groups. Consideration of these factors is not deemed inconsistent with the general standards of conduct required of all business corporations. A director is not liable for monetary damages for any act or omission taken as a director other than acts or omissions the director knew or believed to be clearly in conflict with the benefit corporations general or specific public benefit purpose. The director is also not liable for failure of the benefit corporation to create a general or specific public benefit.

The board of directors must designate one director who is an independent person to be the benefit director. The benefit director must prepare an opinion regarding the actions and success of the benefit corporation in meeting its benefit purposes over the year, as well as whether the directors complied with the required standard of conduct.

The corporation may also designate a benefit officer to monitor the corporations benefit activities, perform other assigned duties, and prepare the annual benefit report to the shareholders.

The duties of directors may be enforced in a benefit enforcement proceeding. The proceeding may be commenced or maintained only by the corporation directly, or derivatively, by a shareholder who owns 5% or more of the shares, a director, an owner of at least 5% voting interest, by other persons specified in the articles of incorporation, or by the Attorney General.

Part 5. Annual Reporting.

A benefit corporation is required to prepare an annual report that includes:

- A narrative of the manner in which the corporation has pursued its general and specific public benefit purposes, and any circumstances that have hindered the pursuit of the purposes.
- An assessment of the social and environmental performance of the corporation prepared in accordance with a third-party standard.
- The name and address of the benefit director and the benefit officer.
- The compensation paid to each director by the benefit corporation.
- The name of each person that owns 5% or more of the outstanding shares.
- The required statement of the benefit director.
- A statement of any relationship between the benefit corporation and the entity that developed the third-party standard.

The report must be sent annually to each shareholder within 120 days following the end of the fiscal year or when the corporation delivers any other annual report, whichever occurs first. The benefit corporation must also post the report on a publically accessible section of its internet website. The report must also be sent with the annual report that the corporation must deliver to the Secretary of Revenue, or in the alternative to the Secretary of State. Upon delivery the report is considered to be a public record.

Section 2 of the PCS requires that, when shares are issued without certificates, all of the information required to be on a benefit corporation share certificate must be sent to the shareholder in a written statement.

Section 3 of the PCS amends the Business Corporations Law to add designation as a benefit corporation and amendment of a benefit corporation's specific public benefit purpose to the list of events that trigger a shareholder's right to obtain an appraisal and payment of the fair value of the shareholder's shares.

EFFECTIVE DATE: This act becomes effective October 1, 2012.

Karen Cochrane-Brown, counsel to House Commerce and Job Development, substantially contributed to this summary.

S26-SMSU-72(CSSU-35) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 26

Judiciary I Committee Substitute Adopted 3/21/11
House Committee Substitute Favorable 5/24/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S26-CSSU-35 [v.2]

6/19/2012 6:24:32 PM

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"The North Carolina Benefit Corporation Act.

"Part 1. Preliminary Provisions.

"**§ 55-18-1. Short title.**

This Article may be cited as "The North Carolina Benefit Corporation Act."

"**§ 55-18-2. Application and effect of Article.**

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall control.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"**§ 55-18-3. Definitions.**

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:
a. Failing to pursue the general public benefit purpose or any specific public benefit purpose set forth in its articles of incorporation.
b. Violating a duty or standard of conduct under this Article.

(4) Benefit officer. – The officer of the benefit corporation designated as such pursuant to G.S. 55-18-42.

(5) General public benefit. – A material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(6) Independent person. – With respect to a benefit corporation, a person who does not have any material relationship with the benefit corporation or a subsidiary of the benefit corporation, either (i) directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or (ii) indirectly as a director, an officer, a general partner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person shall not be deemed to have such a material relationship solely by virtue of serving as the benefit director or the benefit officer of the benefit corporation or of any subsidiary of the benefit corporation that is itself a benefit corporation. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:
a. The person is, or has been within the last three years, an employee, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.
b. An immediate family member of the person is, or has been within the last three years, an officer, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.
c. The person, or an entity in which the person (i) is a director, an officer, a general partner, or a manager or (ii) owns, directly or indirectly, five percent (5%) or more of the outstanding equity interests, owns, directly or indirectly, five percent (5%) or more of the outstanding shares of any series or class of stock of the benefit corporation.

(7) Specific public benefit purpose. – A corporate purpose conferring any particular benefit on society or the environment, including, but not limited to, any of the following:
a. Providing low-income or underserved individuals or communities with beneficial products or services.
b. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
c. Preserving or improving the environment.
d. Improving human health.
e. Promoting the arts, sciences, or advancement of knowledge.
f. Increasing the flow of capital to entities with a public benefit purpose.

(8) Subsidiary of a person. – An entity in which the person owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting equity interests.

(9) Third-party standard. – A standard for defining, reporting, and assessing overall corporate social and environmental performance that meets all of the following requirements:

a. The standard assesses the effect of the business and its operations upon the interests listed in subdivisions (2) through (5) of G.S. 55-18-40(a).

b. The standard is developed by an entity that is independent of the benefit corporation and satisfies the following:

1. Not more than one-third of the members of the governing body of the entity are representatives of either of the following:

I. An association of businesses operating in a specific industry, the performance of whose members is measured by the standard.

II. Businesses whose performance is measured by the standard.

2. The entity is not materially financed by an association or business described in sub-sub-subdivision 1. of this sub-subdivision.

c. The standard is developed by an entity that satisfies the following:

1. Has access to necessary expertise to assess overall corporate social and environmental performance.

2. Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

d. The standard is transparent because the following information about the standard is publicly available:

1. The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria.

2. The process for the development and revision of the standard, including the following:

I. The identity of the directors, officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard.

II. The process by which revisions to the standard and changes to the membership of the governing body are made.

III. An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of "independent person" and "subsidiary" in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"**§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

A benefit corporation shall not be entitled to claim an exemption from any property tax imposed under Subchapter II of Chapter 105 of the General Statutes.

"Part 2. Adoption and Change of Status.

"**§ 55-18-20. Incorporation as a benefit corporation.**

A domestic corporation, including a domestic corporation incorporated upon a conversion effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit corporation by including in its initial articles of incorporation a provision providing that the corporation shall be a benefit corporation governed by this Article. The articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30 and must include all provisions required by, and may include any provision permitted by, G.S. 55-2-02.

"**§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

"**§ 55-18-22. Termination of benefit corporation status.**

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

"**§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

(1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.

(2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes cast by the members entitled to vote thereon.

(3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise provided in the articles of entity, operating agreement, or partnership agreement of the entity.

"Part 3. Corporate Purposes.

"**§ 55-18-30. Name.**

A benefit corporation shall include in its name the words "benefit corporation".

"**§ 55-18-31. Corporate purposes.**

(a) A benefit corporation shall have as one of its corporate purposes the creation of a general public benefit. A benefit corporation may include in its articles of incorporation other corporate purposes, including the purpose of engaging in any lawful business.

(b) A benefit corporation may include as a corporate purpose in its articles of incorporation one or more specific public benefit purposes in addition to its purposes under subsection (a) of this section.

(c) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose. Such an amendment must be approved by the shareholders of the benefit corporation in the manner required by G.S. 55-18-23.

(d) The articles of incorporation of a benefit corporation shall include the statement: "The mission of this benefit corporation is not necessarily compatible with maximizing profits and earnings for shareholders, or maximizing shareholder value in any sale, merger, acquisition, or other similar actions of the corporation."

"**§ 55-18-32, Share Certificates.**

Each certificate for shares in a benefit corporation must conspicuously state: "THIS ENTITY IS A BENEFIT CORPORATION ORGANIZED UNDER ARTICLE 18 OF THE NORTH CAROLINA BUSINESS CORPORATION ACT. THE ARTICLES OF INCORPORATION OF THIS CORPORATION STATE AS ONE OF ITS CORPORATE PURPOSES THE CREATION OF A GENERAL PUBLIC BENEFIT. SUCH PURPOSE IS NOT NECESSARILY COMPATIBLE WITH MAXIMIZING PROFITS AND EARNINGS FOR SHAREHOLDERS, OR MAXIMIZING SHAREHOLDER VALUE IN ANY SALE, MERGER, ACQUISITION, OR OTHER SIMILAR ACTIONS OF THE CORPORATION."

"Part 4. Accountability.

"**§ 55-18-40. Standard of conduct for directors.**

(a) In discharging their duties as directors of a benefit corporation, directors shall consider the effects of any action or decision not to act upon the following:

(1) The shareholders of the benefit corporation.

(2) The employees and workforce of the benefit corporation, its subsidiaries, and suppliers.

(3) The interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation.

(4) The local community and society, including the interests of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans

and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

(b) In addition to the required considerations in subsection (a) of this section, a director of a benefit corporation may consider the effects of any action or decision not to act upon the following:

(1) The resources, intent, and conduct (past, stated, and potential) of any person seeking to acquire control of the benefit corporation.

(2) Other pertinent factors or the interests of any other group that the director in good faith considers to be appropriate.

(c) A director of a benefit corporation need not give priority to the interests of a particular person or group referred to in subsections (a) and (b) of this section over the interests of any other person or group unless the benefit corporation's articles of incorporation explicitly specify a priority of interests.

(d) The consideration of interests and factors in the manner required by this section shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

(e) A director is not liable for monetary damages arising out of an action under this Article with respect to any of the following:

(1) Any act taken as a director, or any omission to act as a director, other than any act or omission that the director at the time of such act or omission knew or believed to be clearly in conflict with the benefit corporation's general public benefit purpose and any specific public benefit purpose stated in its articles of incorporation.

(2) Failure of the benefit corporation to create a general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation must by resolution designate one director who is an independent person to be the benefit director. The benefit director shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit director on the following:

(1) Whether the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the benefit corporation conferred a general public benefit and any specific public benefit during the period covered by the report.

(3) Whether the directors complied with G.S. 55-18-40.

If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the benefit director shall include in the annual benefit report a description, to the extent relevant, of the ways in which the benefit corporation or its directors failed to act or comply.

(d) If a benefit corporation dispenses with a board of directors pursuant to G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the persons who perform the duties of the board of directors designate an independent person with the powers, duties, rights, and immunities of a benefit director.

(e) Regardless of whether the articles of incorporation or the bylaws of a benefit corporation include a provision limiting or eliminating the personal liability of directors authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally liable for monetary damages for any act or omission taken in such capacity unless the act or omission constitutes (i) a transaction from which the director derived an improper personal benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

"**§ 55-18-42. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) The duties of the benefit officer shall include the following:

(1) Monitoring the benefit corporation's pursuit of the general and any specific public benefit purpose of the benefit corporation and the general and any specific public benefit created by the benefit corporation.

(2) Performing such other duties to the extent provided in either of the following:

a. The bylaws of the benefit corporation.

b. A resolution adopted by the board of directors of the benefit corporation that is not in conflict with the bylaws.

(3) Preparing the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-43. Right of action; benefit enforcement proceeding.**

(a) The duties of directors under this Article may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors with respect to the duties of directors under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only by the following:

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.

b. A director.

c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary.

d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation.

(3) By the Attorney General.

(c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section.

"Part 5. Annual Reporting.

"**§ 55-18-50. Annual benefit report.**

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of all of the following:

a. The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which a general public benefit was created.

b. The manner in which the benefit corporation has pursued any specific public benefit purposes during the year and the extent to which a specific public benefit was created.

c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit purposes or the creation by the benefit corporation of a general or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity as a director.

(5) The name of each person that owns five percent (5%) or more of the outstanding shares of the benefit corporation either (i) indirectly, to the extent known to the benefit corporation without independent investigation, or (ii) of record.

(6) The statement of the benefit director described in G.S. 55-18-41(c).

(7) A statement of any relationship, including a financial or governance relationship, between the benefit corporation and the entity that developed the third-party standard that might affect the credibility of the objective assessment of the third-party standard, including any relationships between the directors, officers, or material owners of the benefit corporation and the directors, officers, or material owners of the entity that developed the third-party standard.

(b) The benefit report must be sent annually to each shareholder (i) within 120 days following the end of the fiscal year of the benefit corporation or (ii) at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

(c) A benefit corporation must post each annual benefit report on the publicly accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five years from the date the annual benefit report is first sent to shareholders. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) The annual report that a benefit corporation is required to deliver to the Secretary of Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue or Secretary of State under this section. Upon delivery to the Secretary of Revenue or Secretary of State under this section, the benefit report shall be a public record under G.S. 132-1."

SECTION 2. G.S. 55-6-26(b) reads as rewritten:

"(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by G.S. 55-6-25(b) and (c), and if applicable, ~~G.S. 55-6-27.~~G.S. 55-6-27 and 55-18-32."

SECTION 3. G.S. 55-13-02(a) is amended by adding a new subdivision to read:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

...

(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter, or amendment of the articles of incorporation of a benefit corporation to add, amend, or delete the identification of a specific public benefit purpose."

SECTION 4. This act becomes effective October 1, 2012.

SENATE BILL 26
Judiciary I Committee Substitute Adopted 3/21/11
House Committee Substitute Favorable 5/24/12

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.
"The North Carolina Benefit Corporation Act.
"Part 1. Preliminary Provisions.

"**§ 55-18-1. Short title.**

This Article may be cited as "The North Carolina Benefit Corporation Act."

"**§ 55-18-2. Application and effect of Article.**

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall control.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"**§ 55-18-3. Definitions.**

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:

a. Failing to pursue the general public benefit purpose or any specific public benefit purpose set forth in its articles of incorporation.

b. Violating a duty or standard of conduct under this Article.

(4) Benefit officer. – The officer of the benefit corporation designated as such pursuant to G.S. 55-18-42.

(5) General public benefit. – A material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(6) Independent person. – With respect to a benefit corporation, a person who does not have any material relationship with the benefit corporation or a subsidiary of the benefit corporation, either (i) directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or (ii) indirectly as a director, an officer, a general partner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person shall not be deemed to have such a material relationship solely by virtue of serving as the benefit director or the benefit officer of the benefit corporation or of any subsidiary of the benefit corporation that is itself a benefit corporation. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

a. The person is, or has been within the last three years, an employee, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.

b. An immediate family member of the person is, or has been within the last three years, an officer, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.

c. The person, or an entity in which the person (i) is a director, an officer, a general partner, or a manager or (ii) owns, directly or indirectly, five percent (5%) or more of the outstanding equity interests, owns, directly or indirectly, five percent (5%) or more of the outstanding shares of any series or class of stock of the benefit corporation.

(7) Specific public benefit purpose. – A corporate purpose conferring any particular benefit on society or the environment, including, but not limited to, any of the following:

a. Providing low-income or underserved individuals or communities with beneficial products or services.

b. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

c. Preserving or improving the environment.

d. Improving human health.

e. Promoting the arts, sciences, or advancement of knowledge.

f. Increasing the flow of capital to entities with a public benefit purpose.

(8) Subsidiary of a person. – An entity in which the person owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting equity interests.

(9) Third-party standard. – A standard for defining, reporting, and assessing overall corporate social and environmental performance that meets all of the following requirements:

a. The standard assesses the effect of the business and its operations upon the interests listed in subdivisions (2) through (5) of G.S. 55-18-40(a).

b. The standard is developed by an entity that is independent of the benefit corporation and satisfies the following:

1. Not more than one-third of the members of the governing body of the entity are representatives of either of the following:

I. An association of businesses operating in a specific industry, the performance of whose members is measured by the standard.

II. Businesses whose performance is measured by the standard.

2. The entity is not materially financed by an association or business described in sub-sub-subdivision 1. of this sub-subdivision.

c. The standard is developed by an entity that satisfies the following:

1. Has access to necessary expertise to assess overall corporate social and environmental performance.

2. Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

d. The standard is transparent because the following information about the standard is publicly available:

1. The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria.

2. The process for the development and revision of the standard, including the following:

I. The identity of the directors, officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard.

II. The process by which revisions to the standard and changes to the membership of the governing body are made.

III. An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of "independent person" and "subsidiary" in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"**§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

A benefit corporation shall not be entitled to claim an exemption from any property tax imposed under Subchapter II of Chapter 105 of the General Statutes.

"Part 2. Adoption and Change of Status.

"**§ 55-18-20. Incorporation as a benefit corporation.**

A domestic corporation, including a domestic corporation incorporated upon a conversion effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit corporation by including in its initial articles of incorporation a provision providing that the corporation shall be a benefit corporation governed by this Article. The articles of incorporation

must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30 and must include all provisions required by, and may include any provision permitted by, G.S. 55-2-02.

"**§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

"**§ 55-18-22. Termination of benefit corporation status.**

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

"**§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

(1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.

(2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes cast by the members entitled to vote thereon.

(3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise provided in the articles of entity, operating agreement, or partnership agreement of the entity.

"Part 3. Corporate Purposes.

"§ 55-18-30. Corporate purposes.

(a) A benefit corporation shall have as one of its corporate purposes the creation of a general public benefit. A benefit corporation may include in its articles of incorporation other corporate purposes, including the purpose of engaging in any lawful business.

(b) A benefit corporation may include as a corporate purpose in its articles of incorporation one or more specific public benefit purposes in addition to its purposes under subsection (a) of this section.

(c) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose. Such an amendment must be approved by the shareholders of the benefit corporation in the manner required by G.S. 55-18-23.

"Part 4. Accountability.

"§ 55-18-40. Standard of conduct for directors.

(a) In discharging their duties as directors of a benefit corporation, directors shall consider the effects of any action or decision not to act upon the following:

(1) The shareholders of the benefit corporation.

(2) The employees and workforce of the benefit corporation, its subsidiaries, and suppliers.

(3) The interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation.

(4) The local community and society, including the interests of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

(b) In addition to the required considerations in subsection (a) of this section, a director of a benefit corporation may consider the effects of any action or decision not to act upon the following:

(1) The resources, intent, and conduct (past, stated, and potential) of any person seeking to acquire control of the benefit corporation.

(2) Other pertinent factors or the interests of any other group that the director in good faith considers to be appropriate.

(c) A director of a benefit corporation need not give priority to the interests of a particular person or group referred to in subsections (a) and (b) of this section over the interests of any other person or group unless the benefit corporation's articles of incorporation explicitly specify a priority of interests.

(d) The consideration of interests and factors in the manner required by this section shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

(e) A director is not liable for monetary damages arising out of an action under this Article with respect to any of the following:

(1) Any act taken as a director, or any omission to act as a director, other than any act or omission that the director at the time of such act or omission knew or believed to be clearly in conflict with the benefit corporation's general public benefit purpose and any specific public benefit purpose stated in its articles of incorporation.

(2) Failure of the benefit corporation to create a general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation must by resolution designate one director who is an independent person to be the benefit director. The benefit director shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit director on the following:

(1) Whether the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the benefit corporation conferred a general public benefit and any specific public benefit during the period covered by the report.

(3) Whether the directors complied with G.S. 55-18-40.

If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the benefit director shall include in the annual benefit report a description, to the extent relevant, of the ways in which the benefit corporation or its directors failed to act or comply.

(d) If a benefit corporation dispenses with a board of directors pursuant to G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the persons who perform the duties of the board of directors designate an independent person with the powers, duties, rights, and immunities of a benefit director.

(e) Regardless of whether the articles of incorporation or the bylaws of a benefit corporation include a provision limiting or eliminating the personal liability of directors authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally liable for monetary damages for any act or omission taken in such capacity unless the act or omission constitutes (i) a transaction from which the director derived an improper personal benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

"**§ 55-18-42. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) The duties of the benefit officer shall include the following:

(1) Monitoring the benefit corporation's pursuit of the general and any specific public benefit purpose of the benefit corporation and the general and any specific public benefit created by the benefit corporation.

(2) Performing such other duties to the extent provided in either of the following:

a. The bylaws of the benefit corporation.

b. A resolution adopted by the board of directors of the benefit corporation that is not in conflict with the bylaws.

(3) Preparing the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-43. Right of action; benefit enforcement proceeding.**

(a) The duties of directors under this Article may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors with respect to the duties of directors under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only by the following:

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.

b. A director.

c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary.

d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation.

(c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section.

"Part 5. Annual Reporting.

"**§ 55-18-50. Annual benefit report.**

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of all of the following:

a. The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which a general public benefit was created.

b. The manner in which the benefit corporation has pursued any specific public benefit purposes during the year and the extent to which a specific public benefit was created.

c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit purposes or the creation by the benefit corporation of a general or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity as a director.

(5) The name of each person that owns five percent (5%) or more of the outstanding shares of the benefit corporation either (i) indirectly, to the extent known to the benefit corporation without independent investigation, or (ii) of record.

(6) The statement of the benefit director described in G.S. 55-18-41(c).

(7) A statement of any relationship, including a financial or governance relationship, between the benefit corporation and the entity that developed the third-party standard that might affect the credibility of the objective assessment of the third-party standard, including any relationships between the directors, officers, or material owners of the benefit corporation and the directors, officers, or material owners of the entity that developed the third-party standard.

(b) The benefit report must be sent annually to each shareholder (i) within 120 days following the end of the fiscal year of the benefit corporation or (ii) at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

(c) A benefit corporation must post each annual benefit report on the publicly accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five years from the date the annual benefit report is first sent to shareholders. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) The annual report that a benefit corporation is required to deliver to the Secretary of Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue or Secretary of State under this section."

SECTION 2. G.S. 55-13-02(a) is amended by adding a new subdivision to read:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

...

(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter."

SECTION 3. This act becomes effective October 1, 2012.

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C: Family Law — June 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Cook	Conf. of Clerks of Sup. Ct.
Jarvin Freeman	WAKE CO. CLERK OF SUPERIOR COURT
Barbara Moore	Conf of Clerks of Sp Ct
George Smith	Williams Mullen
K. Bestman	TSS
Preston Howard	MCIC
Doug HERON	WM
Stephanie Nieman	B Lab
NADINA PERERA	B LAB
Austin Baird	News & Observer
Penny Griffin	School of Gov.

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C: Family Law — June 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Murtha	NC DCR
Bob Sandum	Chapel Hill Chamber of Commerce
J Goodman	NC Chamber
Gary Salamido	"
Maria Kingery	Southern Energy Management, Wake Co.
Mimi Shankin	AVANT Group LLC RTP, NC

VISITOR REGISTRATION SHEET

House Judiciary Subcommittee C: Family Law — June 20, 2012

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JACK BERRY	SERVICE COMMANDER SOFTWARE, INC PO Box 10251, GOLDSBORO NC 27532
A.P. CARLTON	Allen P. and/or N. Childs SB26
KEVIN TRAPANI	The Redwoods Group Morrisville NC
MIMI Shankin	AVANT GROUP LLC RTP, NC
Lynne Coleman	Interested Citizen of North Carolina Raleigh, NC
Cameron Ervin	Gov. office
David Heinen	NC Center for Nonprofits
Chuck Stone	SEANC
Mildred Spearman	NCAOC
Melanie Sloan	DCR

House Committee Pages / Sergeants at Arms

AME OF COMMITTEE J - C.

DATE: 6-20-12 Room: 415

*Name: ALEXANDRA WARREN

County: ROWAN

Sponsor: REP. FOLWELL

*Name: JESSICA COTTEN

County: HARNETT

Sponsor: REP. LEWIS

*Name: HANNAH JONES

County: CUMBERLAND

nsor: REP. PARFITT

*Name: MEGAN RADER

County: ALEXANDER

Sponsor: REP. HOLLO

*Name:

County:

Sponsor:

House Sgt-At Arms:

1. Name: Bill Bass
2. Name:
3. Name: Martha Pannell
4. Name:
5. Name:
6. Name:

MINUTES
HOUSE JUDICIARY SUBCOMMITTEE C (FAMILY LAW)
Wednesday, June 27, 2012

The House Judiciary Subcommittee C (Family Law) met on Wednesday, June 27, 2012, at 10:03 a.m. in room 415 of the Legislative Office Building. The following members were present: Representative Tim Moore, Chair; Representatives R. Brown, Cleveland, Dixon, Hackney, Harrison, Insko, Jones, Jordan, Mobley, Saine, and Weiss.

Rep. Tim Moore presided and called the meeting to order.

The following bill was considered:

SB 26, North Carolina Benefit Corporation Act. (Senators Vaughan, Stevens, and Kinnaird, Primary Sponsors). Chair Moore recognized Representative Brown for a motion for the Proposed Committee Substitute to be before the committee. Vote called and motion passed. Wendy Graf Ray, staff, was recognized to explain the changes in the Proposed Committee Substitute. Senator Vaughan spoke on the bill. Chair Moore recognized from the public to speak: AP Carlton (Attorney), Fred Fletcher (Doing Good Network), Erik Trojian (B Lab), David Heinen (NC Center for Nonprofits), Guy Smith (Citizen), Wynne Coleman (Citizen). Staff passed out 3 attachments (attachment 1, 2, and 3) provided by AP Carlton. Discussion and debate. No vote was taken on the bill, and the bill will be put into a Legislative Research Commission study.

Chair Moore adjourned the meeting at 10:45 a.m.

Respectfully submitted:

Representative Tim Moore, Chair

Nancy Gamiss, Committee Clerk

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2011-2012 SESSION

You are hereby notified that the Committee on **Judiciary Subcommittee C** will meet as follows:

DAY & DATE: Wednesday, June 27, 2012
TIME: 10:00 am
LOCATION: 415 LOB
COMMENTS:

The following bills will be considered:

BILL NO.	SHORT TITLE	SPONSOR
SB 26	North Carolina Benefit Corporation Act.	Senator Vaughan Senator Stevens Senator Kinnaird

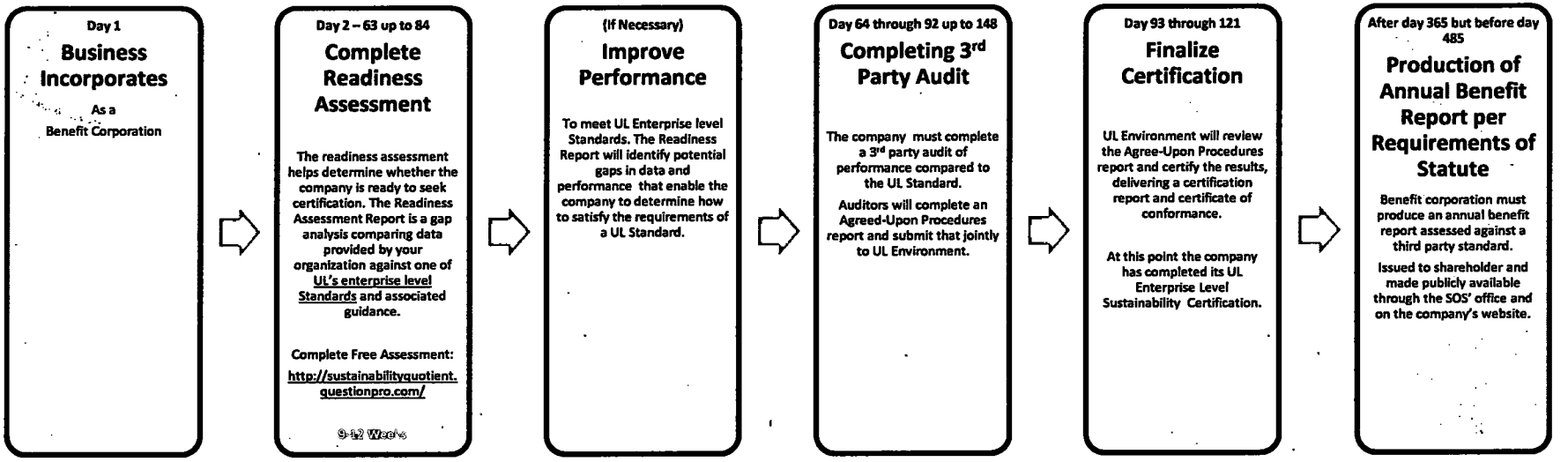
Respectfully,
Representative T. Moore, Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11 AM** o'clock on **June 26, 2011.**

☐ Principal Clerk
☐ Reading Clerk – House Chamber

Nancy Garriss (Committee Assistant)

UL Enterprise Level Sustainability Certification



Attachment 1

attachment 2

	Corporations	Benefit Corporations	Tax-Exempt Nonprofits
Fiduciary Duty of Directors	Solely to maximize shareholder value	Make profit while creating general public benefit	To create public good in accordance with a charter approved by the state
Ownership	Shareholders/Investors	Shareholders/investors	Governed by a board of directors, who operate the corporation for the public good under the supervision of the IRS
Governing Body	Board of Directors elected by the shareholders	Board of Directors elected by the shareholders	Board of Directors elected by members of the non profit corporation or a board of directors of a non-member non profit corporation
Controlling or Governing Entities	Secretary of State and Attorney General. If publicly held US SEC	Secretary of State and Attorney General. If publicly held US Security and Exchange Commission	Secretary of State, Attorney General and IRS
Sources of Capital	Private/public equity and/or debt and after tax profit	Private/public equity and/or debt and after tax profit	Private and/or governmental grants or enterprise revenue
Financial Reporting	Annual Financial Report and proxy statement in accordance with GAAP and corporate and securities law regulation	Annual Financial Report and proxy statement in accordance with GAAP and corporate and securities law regulation	Annual Financial Report in accordance with GAAP and corporate law regulation to members or board of directors of non-member non profit. Public disclosure of annual IRS tax return (Form 990)
Additional Reporting		Benefit Corporations must show how they are meeting their social purpose obligation to the public by filing annually a required report with the SOS; which is a public record	
Disposition of After Tax Earned Revenue	Profits may be re-invested or distributed to owners after tax	Profits may be re-invested or distributed to owners after tax	Excess Revenue is required to be further invested in the mission of the non-profit. Excess enterprise revenue are assessed unrelated business income tax by the IRS by filing a 990T
Tax Implications	Corporate Profits are taxed as a C or S corporation	Corporate Profits are taxed as a C or S corporation	Excess mission related revenue is not taxed but must be reinvested in the mission of the non-profit. Non profit mission unrelated revenue is taxed as unrelated business income by the IRS

attachment 3

The North Carolina House Judiciary Committee C
Support for S 26 (Vaughan) Benefit Corporation

June 25, 2012

To House Judiciary Committee C Chairman and Members:

On behalf of UL Environment, I am writing to express our strong support for the North Carolina Benefit Corporation legislation S 26 (Vaughan) to create a new voluntary class of corporations that best serves the needs of North Carolina's business leaders. Because this legislation simply creates an option for businesses who so choose to engage, it doesn't add cost or regulation.

Benefit corporations are a new class of corporation that redefines fiduciary duty to include consideration of the interests of employees, community and the environment, not just shareholders. At UL Environment we believe that these should be what a corporation considers good business. Importantly, shareholders and directors of benefit corporations are given expanded rights to enforce this higher standard of conduct. In addition, recognizing the risks of green-washing, benefit corporations are required to publish an annual report on their overall social and environmental performance using an independent, credible, and transparent third party standard. Benefit corporations are aimed at 'doing good' because their corporate purpose must include the pursuit of a material positive impact on society and the environment as measured by a third party standard and their directors' fiduciary duty includes consideration of the interests of society, not just shareholders.

Benefit corporation legislation has already passed in seven states, and is moving forward in six others. This legislations has received strong bi-partisan support because it is voluntary and has no budget impact-it simply creates the legal infrastructure for the next generation of sustainable businesses that will create high quality jobs and improve quality of life in our communities and on our planet.

UL LLC
333 Pfingsten Road, Northbrook, IL 60062-2096 USA
T: 847.272.8800 / F: 847.272.8129 / W: UL.com

UL Environment seeks your affirmative vote on North Carolina Benefit Corporation legislation S 26 (Vaughan). By your affirmative vote you will give North Carolina the additional tools it needs to grow its economy.

Sincerely,

Mark Rossolo
Director of Public Affairs
UL Environment

SENATE BILL 26:
North Carolina Benefit Corporation Act

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 20, 2012
Introduced by:	Sens. Vaughan, Stevens, Kinnaird	**Prepared by:**	Wendy Graf Ray
Analysis of:	PCS to Third Edition S26-CSSU-35		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 26 would establish the North Carolina Benefit Corporation Act. The act authorizes the creation of a benefit corporation which must include within its corporate purposes a general public benefit that has a material positive impact on society and the environment. A benefit corporation may also include one or more specific public benefit purposes in addition to its general public benefit. The benefit corporation must appoint an independent benefits director and prepare an annual benefit report, as provided by the act. The act also authorizes a right of action against the directors of the corporation to enforce the directors' duties under the act.***

BILL ANALYSIS:

Section 1 of the PCS enacts a new Article 18 in Chapter 55 of the General Statutes, which enacts the North Carolina Benefit Corporation Act.

Part 1. Preliminary Provisions

This part of the act authorizes the creation of benefit corporations in North Carolina. A benefit corporation is a domestic corporation that elects to become subject to the requirements of the act. All other provisions of the Business Corporation Act apply to benefit corporations as well. Part 1 also includes the definitions section.

A benefit corporation is not entitled to claim a property tax exemption.

Part 2. Adoption and Change of Status

This part of the act describes the method by which a corporation may incorporate as a benefit corporation or transition to benefit corporation status. The transition, conversion, merger, or share exchange of an existing corporation requires an affirmative vote of at least 66 2/3% of the outstanding shares of each class or series of stock.

In addition, a benefit corporation can terminate its status by amending its articles of incorporation to delete the provisions identifying it as a benefit corporation. The termination also must be adopted by a vote of 66 2/3% of the outstanding shares.

Part 3. Corporate Purposes.

A benefit corporation must have as one of its corporate purposes the creation of a general public benefit, which is defined as a "material positive impact on society and the environment, taken as a whole, as measured by an independent third-party standard, from the business and operations of a benefit corporation."

A benefit corporation may include as a corporate purpose one or more specific public benefit purposes in addition to its general public benefit. Specific public benefit purposes include:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond creation of jobs in the normal course of business.
- Preserving or improving the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a public benefit purpose.

The benefit corporation must provide notice to the public and its shareholders of its status by including the words "benefit corporation" in its name, and by including a statement in its articles of incorporation and on each share certificate stating that it has a corporate purpose of creating a public benefit, which is not necessarily compatible with maximizing profits.

Part 4. Accountability.

This part establishes the standards of conduct for directors. Benefit corporation directors are required to consider the effects of any action or decision not to act upon the following:

- Shareholders of the benefit corporation.
- Employees of the corporation, it subsidiaries and suppliers.
- Customers, to the extent they are beneficiaries of the general or specific purposes.
- The local community and society.
- The local and global environment.
- The short and long-term interests of the benefit corporation.
- The ability of the benefit corporation to accomplish its general and any specific purposes.

Directors are not required to give priority to any of the interests or groups. Consideration of these factors is not deemed inconsistent with the general standards of conduct required of all business corporations. A director is not liable for monetary damages for any act or omission taken as a director other than acts or omissions the director knew or believed to be clearly in conflict with the benefit corporations general or specific public benefit purpose. The director is also not liable for failure of the benefit corporation to create a general or specific public benefit.

The board of directors must designate one director who is an independent person to be the benefit director. The benefit director must prepare an opinion regarding the actions and success of the benefit corporation in meeting its benefit purposes over the year, as well as whether the directors complied with the required standard of conduct.

The corporation may also designate a benefit officer to monitor the corporations benefit activities, perform other assigned duties, and prepare the annual benefit report to the shareholders.

The duties of directors may be enforced in a benefit enforcement proceeding. The proceeding may be commenced or maintained only by the corporation directly, or derivatively, by a shareholder who owns 5% or more of the shares, a director, an owner of at least 5% voting interest, by other persons specified in the articles of incorporation, or by the Attorney General.

Part 5. Annual Reporting.

A benefit corporation is required to prepare an annual report that includes:

- A narrative of the manner in which the corporation has pursued its general and specific public benefit purposes, and any circumstances that have hindered the pursuit of the purposes.
- An assessment of the social and environmental performance of the corporation prepared in accordance with a third-party standard.
- The name and address of the benefit director and the benefit officer.
- The compensation paid to each director by the benefit corporation.
- The name of each person that owns 5% or more of the outstanding shares.
- The required statement of the benefit director.
- A statement of any relationship between the benefit corporation and the entity that developed the third-party standard.

The report must be sent annually to each shareholder within 120 days following the end of the fiscal year or when the corporation delivers any other annual report, whichever occurs first. The benefit corporation must also post the report on a publically accessible section of its internet website. The report must also be sent with the annual report that the corporation must deliver to the Secretary of Revenue, or in the alternative to the Secretary of State. Upon delivery the report is considered to be a public record.

Section 2 of the PCS requires that, when shares are issued without certificates, all of the information required to be on a benefit corporation share certificate must be sent to the shareholder in a written statement.

Section 3 of the PCS amends the Business Corporations Law to add designation as a benefit corporation and amendment of a benefit corporation's specific public benefit purpose to the list of events that trigger a shareholder's right to obtain an appraisal and payment of the fair value of the shareholder's shares.

EFFECTIVE DATE: This act becomes effective October 1, 2012.

Karen Cochrane-Brown, counsel to House Commerce and Job Development, substantially contributed to this summary.

S26-SMSU-72(CSSU-35) v1

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S D

SENATE BILL 26

Judiciary I Committee Substitute Adopted 3/21/11
House Committee Substitute Favorable 5/24/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S26-CSSU-35 [v.4]

6/26/2012 2:40:33 PM

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.

"The North Carolina Benefit Corporation Act.

"Part 1. Preliminary Provisions.

"**§ 55-18-1. Short title.**

This Article may be cited as "The North Carolina Benefit Corporation Act."

"**§ 55-18-2. Application and effect of Article.**

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall control.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"**§ 55-18-3. Definitions.**

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:
a. Failing to pursue the general public benefit purpose or any specific public benefit purpose set forth in its articles of incorporation.
b. Violating a duty or standard of conduct under this Article.

(4) Benefit officer. – The officer of the benefit corporation designated as such pursuant to G.S. 55-18-42.

(5) General public benefit. – A material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(6) Independent person. – With respect to a benefit corporation, a person who does not have any material relationship with the benefit corporation or a subsidiary of the benefit corporation, either (i) directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or (ii) indirectly as a director, an officer, a general partner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person shall not be deemed to have such a material relationship solely by virtue of serving as the benefit director or the benefit officer of the benefit corporation or of any subsidiary of the benefit corporation that is itself a benefit corporation. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:
a. The person is, or has been within the last three years, an employee, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.
b. An immediate family member of the person is, or has been within the last three years, an officer, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.
c. The person, or an entity in which the person (i) is a director, an officer, a general partner, or a manager or (ii) owns, directly or indirectly, five percent (5%) or more of the outstanding equity interests, owns, directly or indirectly, five percent (5%) or more of the outstanding shares of any series or class of stock of the benefit corporation.

(7) Specific public benefit purpose. – A corporate purpose conferring any particular benefit on society or the environment, including, but not limited to, any of the following:
a. Providing low-income or underserved individuals or communities with beneficial products or services.
b. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
c. Preserving or improving the environment.
d. Improving human health.
e. Promoting the arts, sciences, or advancement of knowledge.
f. Increasing the flow of capital to entities with a public benefit purpose.

(8) Subsidiary of a person. – An entity in which the person owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting equity interests.

(9) Third-party standard. – A standard for defining, reporting, and assessing overall corporate social and environmental performance that meets all of the following requirements:

a. The standard assesses the effect of the business and its operations upon the interests listed in subdivisions (2) through (5) of G.S. 55-18-40(a).

b. The standard is developed by an entity that is independent of the benefit corporation and satisfies the following:

1. Not more than one-third of the members of the governing body of the entity are representatives of either of the following:

I. An association of businesses operating in a specific industry, the performance of whose members is measured by the standard.

II. Businesses whose performance is measured by the standard.

2. The entity is not materially financed by an association or business described in sub-sub-subdivision 1. of this sub-subdivision.

c. The standard is developed by an entity that satisfies the following:

1. Has access to necessary expertise to assess overall corporate social and environmental performance.

2. Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

d. The standard is transparent because the following information about the standard is publicly available:

1. The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria.

2. The process for the development and revision of the standard, including the following:

I. The identity of the directors, officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard.

II. The process by which revisions to the standard and changes to the membership of the governing body are made.

III. An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of "independent person" and "subsidiary" in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"**§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

A benefit corporation shall not be entitled to claim an exemption from any property tax imposed under Subchapter II of Chapter 105 of the General Statutes.

"Part 2. Adoption and Change of Status.

"**§ 55-18-20. Incorporation as a benefit corporation.**

A domestic corporation, including a domestic corporation incorporated upon a conversion effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit corporation by including in its initial articles of incorporation a provision providing that the corporation shall be a benefit corporation governed by this Article. The articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-31 and must include all provisions required by, and may include any provision permitted by, G.S. 55-2-02.

"**§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-31. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-31.

"**§ 55-18-22. Termination of benefit corporation status.**

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

"**§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

(1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series; provided that any transition to benefit corporation status

under G.S. 55-18-21 must be approved by the affirmative vote of one hundred percent (100%) of the outstanding shares or each class and series of stock of the corporation, voting as separate groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.

(2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of one hundred percent (100%) of the votes cast by the members entitled to vote thereon.

(3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise provided in the articles of entity, operating agreement, or partnership agreement of the entity.

"Part 3. Corporate Purposes.

"**§ 55-18-30. Name.**

A benefit corporation shall include in its name the words "benefit corporation" or the initials "BC".

"**§ 55-18-31. Corporate purposes.**

(a) A benefit corporation shall have as one of its corporate purposes the creation of a general public benefit. A benefit corporation may include in its articles of incorporation other corporate purposes, including the purpose of engaging in any lawful business.

(b) A benefit corporation may include as a corporate purpose in its articles of incorporation one or more specific public benefit purposes in addition to its purposes under subsection (a) of this section.

(c) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose. Such an amendment must be approved by the shareholders of the benefit corporation in the manner required by G.S. 55-18-23."

"**§ 55-18-32. Share Certificates.**

Each certificate for shares in a benefit corporation must conspicuously state: "THIS ENTITY IS A BENEFIT CORPORATION ORGANIZED UNDER ARTICLE 18 OF THE NORTH CAROLINA BUSINESS CORPORATION ACT. THE ARTICLES OF INCORPORATION OF THIS CORPORATION STATE AS ONE OF ITS CORPORATE PURPOSES THE CREATION OF A GENERAL PUBLIC BENEFIT."

"Part 4. Accountability.

"**§ 55-18-40. Standard of conduct for directors.**

(a) In discharging their duties as directors of a benefit corporation, directors shall consider the effects of any action or decision not to act upon the following:

(1) The shareholders of the benefit corporation.

(2) The employees and workforce of the benefit corporation, its subsidiaries, and suppliers.

(3) The interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation.

(4) The local community and society, including the interests of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

(b) In addition to the required considerations in subsection (a) of this section, a director of a benefit corporation may consider the effects of any action or decision not to act upon the following:

(1) The resources, intent, and conduct (past, stated, and potential) of any person seeking to acquire control of the benefit corporation.

(2) Other pertinent factors or the interests of any other group that the director in good faith considers to be appropriate.

(c) A director of a benefit corporation need not give priority to the interests of a particular person or group referred to in subsections (a) and (b) of this section over the interests of any other person or group unless the benefit corporation's articles of incorporation explicitly specify a priority of interests.

(d) The consideration of interests and factors in the manner required by this section shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

(e) A director is not liable for monetary damages arising out of an action under this Article with respect to any of the following:

(1) Any act taken as a director, or any omission to act as a director, other than any act or omission that the director at the time of such act or omission knew or believed to be clearly in conflict with the benefit corporation's general public benefit purpose and any specific public benefit purpose stated in its articles of incorporation.

(2) Failure of the benefit corporation to create a general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation must by resolution designate one director who is an independent person to be the benefit director. The benefit director shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit director on the following:

(1) Whether the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the benefit corporation conferred a general public benefit and any specific public benefit during the period covered by the report.

(3) Whether the directors complied with G.S. 55-18-40.

If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the benefit director shall include in the annual benefit report a description, to the extent relevant, of the ways in which the benefit corporation or its directors failed to act or comply.

(d) If a benefit corporation dispenses with a board of directors pursuant to G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the persons who perform the duties of the board of directors designate an independent person with the powers, duties, rights, and immunities of a benefit director.

(e) Regardless of whether the articles of incorporation or the bylaws of a benefit corporation include a provision limiting or eliminating the personal liability of directors authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally

liable for monetary damages for any act or omission taken in such capacity unless the act or omission constitutes (i) a transaction from which the director derived an improper personal benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

"**§ 55-18-42. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) The duties of the benefit officer shall include the following:

(1) Monitoring the benefit corporation's pursuit of the general and any specific public benefit purpose of the benefit corporation and the general and any specific public benefit created by the benefit corporation.

(2) Performing such other duties to the extent provided in either of the following:

a. The bylaws of the benefit corporation.

b. A resolution adopted by the board of directors of the benefit corporation that is not in conflict with the bylaws.

(3) Preparing the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-43. Right of action; benefit enforcement proceeding.**

(a) The duties of directors under this Article may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors with respect to the duties of directors under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only by the following:

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.

b. A director.

c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary.

d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation.

(c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section.

"Part 5. Annual Reporting.

"**§ 55-18-50. Annual benefit report.**

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of all of the following:

a. The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which a general public benefit was created.

b. The manner in which the benefit corporation has pursued any specific public benefit purposes during the year and the extent to which a specific public benefit was created.

c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit

purposes or the creation by the benefit corporation of a general or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity as a director.

(5) The name of each person that owns five percent (5%) or more of the outstanding shares of the benefit corporation either (i) indirectly, to the extent known to the benefit corporation without independent investigation, or (ii) of record.

(6) The statement of the benefit director described in G.S. 55-18-41(c).

(7) A statement of any relationship, including a financial or governance relationship, between the benefit corporation and the entity that developed the third-party standard that might affect the credibility of the objective assessment of the third-party standard, including any relationships between the directors, officers, or material owners of the benefit corporation and the directors, officers, or material owners of the entity that developed the third-party standard.

(b) The benefit report must be sent annually to each shareholder (i) within 120 days following the end of the fiscal year of the benefit corporation or (ii) at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

(c) A benefit corporation must post each annual benefit report on the publicly accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five years from the date the annual benefit report is first sent to shareholders. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) The annual report that a benefit corporation is required to deliver to the Secretary of Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue or Secretary of State under this section. Upon delivery to the Secretary of Revenue or Secretary of State under this section, the benefit report shall be a public record under G.S. 132-1."

SECTION 2. G.S. 55-6-26(b) reads as rewritten:

"(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by G.S. 55-6-25(b) and (c), and if applicable, ~~G.S. 55-6-27.~~G.S. 55-6-27 and 55-18-32."

SECTION 3. G.S. 55-13-02(a) is amended by adding a new subdivision to read:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

...

(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter, or amendment of the articles

of incorporation of a benefit corporation to add, amend, or delete the identification of a specific public benefit purpose."

SECTION 4. This act becomes effective October 1, 2012.

SENATE BILL 26:
North Carolina Benefit Corporation Act

2011-2012 General Assembly

Committee:	House Judiciary Subcommittee C	**Date:**	June 27, 2012
Introduced by:	Sens. Vaughan, Stevens, Kinnaird	**Prepared by:**	Wendy Graf Ray Committee Counsel
Analysis of:	PCS to Third Edition S26-CSSU-35		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 26 would establish the North Carolina Benefit Corporation Act. The act authorizes the creation of a benefit corporation which must include within its corporate purposes a general public benefit that has a material positive impact on society and the environment. A benefit corporation may also include one or more specific public benefit purposes in addition to its general public benefit. The benefit corporation must appoint an independent benefits director and prepare an annual benefit report, as provided by the act. The act also authorizes a right of action against the directors of the corporation to enforce the directors' duties under the act.***

BILL ANALYSIS:

Section 1 of the PCS enacts a new Article 18 in Chapter 55 of the General Statutes, which enacts the North Carolina Benefit Corporation Act.

Part 1. Preliminary Provisions

This part of the act authorizes the creation of benefit corporations in North Carolina. A benefit corporation is a domestic corporation that elects to become subject to the requirements of the act. All other provisions of the Business Corporation Act apply to benefit corporations as well. Part 1 also includes the definitions section.

A benefit corporation is not entitled to claim a property tax exemption.

Part 2. Adoption and Change of Status

This part of the act describes the method by which a corporation may incorporate as a benefit corporation or transition to benefit corporation status. The transition, conversion, merger, or share exchange of an existing corporation requires an affirmative vote of 100% of the outstanding shares of each class or series of stock.

In addition, a benefit corporation can terminate its status by amending its articles of incorporation to delete the provisions identifying it as a benefit corporation. The termination must be adopted by a vote of 66 2/3% of the outstanding shares.

Part 3. Corporate Purposes.

A benefit corporation must have as one of its corporate purposes the creation of a general public benefit, which is defined as a "material positive impact on society and the environment, taken as a whole, as measured by an independent third-party standard, from the business and operations of a benefit corporation."

A benefit corporation may include as a corporate purpose one or more specific public benefit purposes in addition to its general public benefit. A specific public benefit purpose includes, but is not limited to:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond creation of jobs in the normal course of business.
- Preserving or improving the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.
- Increasing the flow of capital to entities with a public benefit purpose.

The benefit corporation must provide notice to the public and its shareholders of its status by including the words "benefit corporation" or the initials "BC" in its name, and by including a statement on each share certificate stating that it is a benefit corporation and has a corporate purpose of creating a general public benefit.

Part 4. Accountability.

This part establishes the standards of conduct for directors. Benefit corporation directors are required to consider the effects of any action or decision not to act upon the following:

- Shareholders of the benefit corporation.
- Employees of the corporation, it subsidiaries and suppliers.
- Customers, to the extent they are beneficiaries of the general or specific purposes.
- The local community and society.
- The local and global environment.
- The short and long-term interests of the benefit corporation.
- The ability of the benefit corporation to accomplish its general and any specific purposes.

Directors are not required to give priority to any of the interests or groups. Consideration of these factors is not deemed inconsistent with the general standards of conduct required of all business corporations. A director is not liable for monetary damages for any act or omission taken as a director other than acts or omissions the director knew or believed to be clearly in conflict with the benefit corporations general or specific public benefit purpose. The director is also not liable for failure of the benefit corporation to create a general or specific public benefit.

The board of directors must designate one director who is an independent person to be the benefit director. The benefit director must prepare an opinion regarding the actions and success of the benefit corporation in meeting its benefit purposes over the year, as well as whether the directors complied with the required standard of conduct.

The corporation may also designate a benefit officer to monitor the corporations benefit activities, perform other assigned duties, and prepare the annual benefit report to the shareholders.

The duties of directors may be enforced in a benefit enforcement proceeding. The proceeding may be commenced or maintained only by the corporation directly, or derivatively, by a shareholder who owns 5% or more of the shares, a director, an owner of at least 5% voting interest, or by other persons specified in the articles of incorporation.

Part 5. Annual Reporting.

A benefit corporation is required to prepare an annual report that includes:

- A narrative of the manner in which the corporation has pursued its general and specific public benefit purposes, and any circumstances that have hindered the pursuit of the purposes.
- An assessment of the social and environmental performance of the corporation prepared in accordance with a third-party standard.
- The name and address of the benefit director and the benefit officer.
- The compensation paid to each director by the benefit corporation.
- The name of each person that owns 5% or more of the outstanding shares.
- The required statement of the benefit director.
- A statement of any relationship between the benefit corporation and the entity that developed the third-party standard.

The report must be sent annually to each shareholder within 120 days following the end of the fiscal year or when the corporation delivers any other annual report, whichever occurs first. The benefit corporation must also post the report on a publically accessible section of its internet website. The report must also be sent with the annual report that the corporation must deliver to the Secretary of Revenue, or in the alternative to the Secretary of State. Upon delivery the report is considered to be a public record.

Section 2 of the PCS requires that, when shares are issued without certificates, all of the information required to be on a benefit corporation share certificate must be sent to the shareholder in a written statement.

Section 3 of the PCS amends the Business Corporations Law to add designation as a benefit corporation and amendment of a benefit corporation's specific public benefit purpose to the list of events that trigger a shareholder's right to obtain an appraisal and payment of the fair value of the shareholder's shares.

EFFECTIVE DATE: This act becomes effective October 1, 2012.

Karen Cochrane-Brown, counsel to House Commerce and Job Development, substantially contributed to this summary.

S26-SMSU-72(CSSU-35) v2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 26
Judiciary I Committee Substitute Adopted 3/21/11
House Committee Substitute Favorable 5/24/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S26-CSSU-35 [v.2]

6/19/2012 6:24:32 PM

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.
"The North Carolina Benefit Corporation Act.
"Part 1. Preliminary Provisions.

"**§ 55-18-1. Short title.**

This Article may be cited as "The North Carolina Benefit Corporation Act."

"**§ 55-18-2. Application and effect of Article.**

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall control.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"**§ 55-18-3. Definitions.**

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:
a. Failing to pursue the general public benefit purpose or any specific public benefit purpose set forth in its articles of incorporation.
b. Violating a duty or standard of conduct under this Article.

(4) Benefit officer. – The officer of the benefit corporation designated as such pursuant to G.S. 55-18-42.

(5) General public benefit. – A material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(6) Independent person. – With respect to a benefit corporation, a person who does not have any material relationship with the benefit corporation or a subsidiary of the benefit corporation, either (i) directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or (ii) indirectly as a director, an officer, a general partner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person shall not be deemed to have such a material relationship solely by virtue of serving as the benefit director or the benefit officer of the benefit corporation or of any subsidiary of the benefit corporation that is itself a benefit corporation. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:
a. The person is, or has been within the last three years, an employee, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.
b. An immediate family member of the person is, or has been within the last three years, an officer, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.
c. The person, or an entity in which the person (i) is a director, an officer, a general partner, or a manager or (ii) owns, directly or indirectly, five percent (5%) or more of the outstanding equity interests, owns, directly or indirectly, five percent (5%) or more of the outstanding shares of any series or class of stock of the benefit corporation.

(7) Specific public benefit purpose. – A corporate purpose conferring any particular benefit on society or the environment, including, but not limited to, any of the following:
a. Providing low-income or underserved individuals or communities with beneficial products or services.
b. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
c. Preserving or improving the environment.
d. Improving human health.
e. Promoting the arts, sciences, or advancement of knowledge.
f. Increasing the flow of capital to entities with a public benefit purpose.

(8) Subsidiary of a person. – An entity in which the person owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting equity interests.

(9) Third-party standard. – A standard for defining, reporting, and assessing overall corporate social and environmental performance that meets all of the following requirements:

a. The standard assesses the effect of the business and its operations upon the interests listed in subdivisions (2) through (5) of G.S. 55-18-40(a).

b. The standard is developed by an entity that is independent of the benefit corporation and satisfies the following:

1. Not more than one-third of the members of the governing body of the entity are representatives of either of the following:

I. An association of businesses operating in a specific industry, the performance of whose members is measured by the standard.

II. Businesses whose performance is measured by the standard.

2. The entity is not materially financed by an association or business described in sub-sub-subdivision 1. of this sub-subdivision.

c. The standard is developed by an entity that satisfies the following:

1. Has access to necessary expertise to assess overall corporate social and environmental performance.

2. Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

d. The standard is transparent because the following information about the standard is publicly available:

1. The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria.

2. The process for the development and revision of the standard, including the following:

I. The identity of the directors, officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard.

II. The process by which revisions to the standard and changes to the membership of the governing body are made.

III. An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of "independent person" and "subsidiary" in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"**§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

A benefit corporation shall not be entitled to claim an exemption from any property tax imposed under Subchapter II of Chapter 105 of the General Statutes.

"Part 2. Adoption and Change of Status.

"**§ 55-18-20. Incorporation as a benefit corporation.**

A domestic corporation, including a domestic corporation incorporated upon a conversion effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit corporation by including in its initial articles of incorporation a provision providing that the corporation shall be a benefit corporation governed by this Article. The articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30 and must include all provisions required by, and may include any provision permitted by, G.S. 55-2-02.

"**§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

"**§ 55-18-22. Termination of benefit corporation status.**

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

"**§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

(1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.

(2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes cast by the members entitled to vote thereon.

(3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise provided in the articles of entity, operating agreement, or partnership agreement of the entity.

"Part 3. Corporate Purposes.

"**§ 55-18-30. Name.**

A benefit corporation shall include in its name the words "benefit corporation".

"**§ 55-18-31. Corporate purposes.**

(a) A benefit corporation shall have as one of its corporate purposes the creation of a general public benefit. A benefit corporation may include in its articles of incorporation other corporate purposes, including the purpose of engaging in any lawful business.

(b) A benefit corporation may include as a corporate purpose in its articles of incorporation one or more specific public benefit purposes in addition to its purposes under subsection (a) of this section.

(c) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose. Such an amendment must be approved by the shareholders of the benefit corporation in the manner required by G.S. 55-18-23.

(d) The articles of incorporation of a benefit corporation shall include the statement: "The mission of this benefit corporation is not necessarily compatible with maximizing profits and earnings for shareholders, or maximizing shareholder value in any sale, merger, acquisition, or other similar actions of the corporation."

"**§ 55-18-32, Share Certificates.**

Each certificate for shares in a benefit corporation must conspicuously state: "THIS ENTITY IS A BENEFIT CORPORATION ORGANIZED UNDER ARTICLE 18 OF THE NORTH CAROLINA BUSINESS CORPORATION ACT. THE ARTICLES OF INCORPORATION OF THIS CORPORATION STATE AS ONE OF ITS CORPORATE PURPOSES THE CREATION OF A GENERAL PUBLIC BENEFIT. SUCH PURPOSE IS NOT NECESSARILY COMPATIBLE WITH MAXIMIZING PROFITS AND EARNINGS FOR SHAREHOLDERS, OR MAXIMIZING SHAREHOLDER VALUE IN ANY SALE, MERGER, ACQUISITION, OR OTHER SIMILAR ACTIONS OF THE CORPORATION."

"Part 4. Accountability.

"**§ 55-18-40. Standard of conduct for directors.**

(a) In discharging their duties as directors of a benefit corporation, directors shall consider the effects of any action or decision not to act upon the following:

(1) The shareholders of the benefit corporation.

(2) The employees and workforce of the benefit corporation, its subsidiaries, and suppliers.

(3) The interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation.

(4) The local community and society, including the interests of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans

and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

(b) In addition to the required considerations in subsection (a) of this section, a director of a benefit corporation may consider the effects of any action or decision not to act upon the following:

(1) The resources, intent, and conduct (past, stated, and potential) of any person seeking to acquire control of the benefit corporation.

(2) Other pertinent factors or the interests of any other group that the director in good faith considers to be appropriate.

(c) A director of a benefit corporation need not give priority to the interests of a particular person or group referred to in subsections (a) and (b) of this section over the interests of any other person or group unless the benefit corporation's articles of incorporation explicitly specify a priority of interests.

(d) The consideration of interests and factors in the manner required by this section shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

(e) A director is not liable for monetary damages arising out of an action under this Article with respect to any of the following:

(1) Any act taken as a director, or any omission to act as a director, other than any act or omission that the director at the time of such act or omission knew or believed to be clearly in conflict with the benefit corporation's general public benefit purpose and any specific public benefit purpose stated in its articles of incorporation.

(2) Failure of the benefit corporation to create a general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation must by resolution designate one director who is an independent person to be the benefit director. The benefit director shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit director on the following:

(1) Whether the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the benefit corporation conferred a general public benefit and any specific public benefit during the period covered by the report.

(3) Whether the directors complied with G.S. 55-18-40.

If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the benefit director shall include in the annual benefit report a description, to the extent relevant, of the ways in which the benefit corporation or its directors failed to act or comply.

(d) If a benefit corporation dispenses with a board of directors pursuant to G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the persons who perform the duties of the board of directors designate an independent person with the powers, duties, rights, and immunities of a benefit director.

(e) Regardless of whether the articles of incorporation or the bylaws of a benefit corporation include a provision limiting or eliminating the personal liability of directors authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally liable for monetary damages for any act or omission taken in such capacity unless the act or omission constitutes (i) a transaction from which the director derived an improper personal benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

"**§ 55-18-42. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) The duties of the benefit officer shall include the following:

(1) Monitoring the benefit corporation's pursuit of the general and any specific public benefit purpose of the benefit corporation and the general and any specific public benefit created by the benefit corporation.

(2) Performing such other duties to the extent provided in either of the following:

a. The bylaws of the benefit corporation.

b. A resolution adopted by the board of directors of the benefit corporation that is not in conflict with the bylaws.

(3) Preparing the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-43. Right of action; benefit enforcement proceeding.**

(a) The duties of directors under this Article may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors with respect to the duties of directors under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only by the following:

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.

b. A director.

c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary.

d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation.

(3) By the Attorney General.

(c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section.

"Part 5. Annual Reporting.

"**§ 55-18-50. Annual benefit report.**

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of all of the following:

a. The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which a general public benefit was created.

b. The manner in which the benefit corporation has pursued any specific public benefit purposes during the year and the extent to which a specific public benefit was created.

c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit purposes or the creation by the benefit corporation of a general or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity as a director.

(5) The name of each person that owns five percent (5%) or more of the outstanding shares of the benefit corporation either (i) indirectly, to the extent known to the benefit corporation without independent investigation, or (ii) of record.

(6) The statement of the benefit director described in G.S. 55-18-41(c).

(7) A statement of any relationship, including a financial or governance relationship, between the benefit corporation and the entity that developed the third-party standard that might affect the credibility of the objective assessment of the third-party standard, including any relationships between the directors, officers, or material owners of the benefit corporation and the directors, officers, or material owners of the entity that developed the third-party standard.

(b) The benefit report must be sent annually to each shareholder (i) within 120 days following the end of the fiscal year of the benefit corporation or (ii) at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

(c) A benefit corporation must post each annual benefit report on the publicly accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five years from the date the annual benefit report is first sent to shareholders. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) The annual report that a benefit corporation is required to deliver to the Secretary of Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue or Secretary of State under this section. Upon delivery to the Secretary of Revenue or Secretary of State under this section, the benefit report shall be a public record under G.S. 132-1."

SECTION 2. G.S. 55-6-26(b) reads as rewritten:

"(b) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by G.S. 55-6-25(b) and (c), and if applicable, ~~G.S. 55-6-27.~~G.S. 55-6-27 and 55-18-32."

SECTION 3. G.S. 55-13-02(a) is amended by adding a new subdivision to read:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

...

(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter, or amendment of the articles of incorporation of a benefit corporation to add, amend, or delete the identification of a specific public benefit purpose."

SECTION 4. This act becomes effective October 1, 2012.

SENATE BILL 26
Judiciary I Committee Substitute Adopted 3/21/11
House Committee Substitute Favorable 5/24/12

Short Title: North Carolina Benefit Corporation Act. (Public)

Sponsors:

Referred to:

February 2, 2011

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA BENEFIT CORPORATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 55 of the General Statutes is amended by adding a new Article to read:

"Article 18.
"The North Carolina Benefit Corporation Act.
"Part 1. Preliminary Provisions.

"**§ 55-18-1. Short title.**

This Article may be cited as "The North Carolina Benefit Corporation Act."

"**§ 55-18-2. Application and effect of Article.**

(a) This Article applies to all benefit corporations.

(b) The provisions of the other Articles of this Chapter apply to benefit corporations. If any provision of this Article conflicts with any provision of the other Articles of this Chapter, the provision of this Article shall control.

(c) Other than as provided in G.S. 55-18-21, corporations that are not benefit corporations shall not be subject to this Article, and this Article shall not otherwise affect a statute or rule of law that is applicable to a corporation that is not a benefit corporation.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not be inconsistent with or supersede a provision of this Article, except to the extent expressly permitted in this Article.

"**§ 55-18-3. Definitions.**

(a) The following definitions apply to this Article:

(1) Benefit corporation. – A domestic corporation that has elected to become subject to this Article by including a provision in its articles of incorporation providing that it shall be a benefit corporation governed by this Article and that has not terminated its status as a benefit corporation pursuant to G.S. 55-18-22.

(2) Benefit director. – The director of the benefit corporation designated as such pursuant to G.S. 55-18-41.

(3) Benefit enforcement proceeding. – Any claim or action brought under G.S. 55-18-43 against a director of a benefit corporation for any of the following:

a. Failing to pursue the general public benefit purpose or any specific public benefit purpose set forth in its articles of incorporation.

b. Violating a duty or standard of conduct under this Article.

(4) Benefit officer. – The officer of the benefit corporation designated as such pursuant to G.S. 55-18-42.

(5) General public benefit. – A material positive impact on society and the environment, taken as a whole, as measured by a third-party standard, from the business and operations of a benefit corporation.

(6) Independent person. – With respect to a benefit corporation, a person who does not have any material relationship with the benefit corporation or a subsidiary of the benefit corporation, either (i) directly as a shareholder of the benefit corporation or as a partner, a member, or an owner of a subsidiary of the benefit corporation or (ii) indirectly as a director, an officer, a general partner, or a manager of an entity that has a material relationship with the benefit corporation or a subsidiary of the benefit corporation. A person shall not be deemed to have such a material relationship solely by virtue of serving as the benefit director or the benefit officer of the benefit corporation or of any subsidiary of the benefit corporation that is itself a benefit corporation. A material relationship between a person and the benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

a. The person is, or has been within the last three years, an employee, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.

b. An immediate family member of the person is, or has been within the last three years, an officer, other than the benefit officer, of the benefit corporation or a subsidiary of the benefit corporation.

c. The person, or an entity in which the person (i) is a director, an officer, a general partner, or a manager or (ii) owns, directly or indirectly, five percent (5%) or more of the outstanding equity interests, owns, directly or indirectly, five percent (5%) or more of the outstanding shares of any series or class of stock of the benefit corporation.

(7) Specific public benefit purpose. – A corporate purpose conferring any particular benefit on society or the environment, including, but not limited to, any of the following:

a. Providing low-income or underserved individuals or communities with beneficial products or services.

b. Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.

c. Preserving or improving the environment.

d. Improving human health.

e. Promoting the arts, sciences, or advancement of knowledge.

f. Increasing the flow of capital to entities with a public benefit purpose.

(8) Subsidiary of a person. – An entity in which the person owns, directly or indirectly, fifty percent (50%) or more of the outstanding voting equity interests.

(9) Third-party standard. – A standard for defining, reporting, and assessing overall corporate social and environmental performance that meets all of the following requirements:

a. The standard assesses the effect of the business and its operations upon the interests listed in subdivisions (2) through (5) of G.S. 55-18-40(a).

b. The standard is developed by an entity that is independent of the benefit corporation and satisfies the following:

1. Not more than one-third of the members of the governing body of the entity are representatives of either of the following:

I. An association of businesses operating in a specific industry, the performance of whose members is measured by the standard.

II. Businesses whose performance is measured by the standard.

2. The entity is not materially financed by an association or business described in sub-sub-subdivision 1. of this sub-subdivision.

c. The standard is developed by an entity that satisfies the following:

1. Has access to necessary expertise to assess overall corporate social and environmental performance.

2. Uses a balanced multistakeholder approach, including a public comment period of at least 30 days to develop the standard.

d. The standard is transparent because the following information about the standard is publicly available:

1. The criteria considered when measuring the overall social and environmental performance of a business, as well as the relative weightings of those criteria.

2. The process for the development and revision of the standard, including the following:

I. The identity of the directors, officers, any material owners, and the governing body of the entity that developed and controls revisions to the standard.

II. The process by which revisions to the standard and changes to the membership of the governing body are made.

III. An accounting of the sources of financial support for the entity, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of "independent person" and "subsidiary" in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

"**§ 55-18-4. Benefit corporation not entitled to property tax exemption.**

A benefit corporation shall not be entitled to claim an exemption from any property tax imposed under Subchapter II of Chapter 105 of the General Statutes.

"Part 2. Adoption and Change of Status.

"**§ 55-18-20. Incorporation as a benefit corporation.**

A domestic corporation, including a domestic corporation incorporated upon a conversion effected pursuant to Part 1 of Article 11A of this Chapter, may be incorporated as a benefit corporation by including in its initial articles of incorporation a provision providing that the corporation shall be a benefit corporation governed by this Article. The articles of incorporation

must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30 and must include all provisions required by, and may include any provision permitted by, G.S. 55-2-02.

"**§ 55-18-21. Transition to benefit corporation status.**

(a) An existing domestic corporation shall become a benefit corporation upon the effectiveness of an amendment to its articles of incorporation to include a provision providing that the corporation shall be a benefit corporation governed by this Article. As amended, such articles of incorporation must also include an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30. An amendment under this section must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of becoming a benefit corporation.

(b) If a corporation or other entity that is not a benefit corporation is a party to a merger, conversion, or share exchange, and the surviving or acquiring corporation in the merger, conversion, or share exchange is, or is to be as a result of such transaction, a benefit corporation, the plan of merger, conversion, or share exchange must be approved in the manner required by G.S. 55-18-23. In addition to other requirements of applicable law, the notice of the meeting of shareholders to approve the plan of merger, conversion, or share exchange must include a discussion of the anticipated effect on the shareholders resulting from the surviving or acquiring corporation being a benefit corporation. Upon the completion of such transaction, the surviving or acquiring corporation to be a benefit corporation must include a provision in its articles of incorporation providing that the corporation shall be a benefit corporation governed by this Article and an identification of any specific public benefit purpose or purposes as required by G.S. 55-18-30.

"**§ 55-18-22. Termination of benefit corporation status.**

(a) A benefit corporation may terminate its status and cease to be subject to this Article by amending its articles of incorporation to delete the provision that the corporation shall be a benefit corporation governed by this Article. Such an amendment must be approved in the manner required by G.S. 55-18-23. The notice of the meeting of shareholders to approve the amendment must include a statement by the board of directors of the reasons why the board is proposing the amendment and a discussion of the anticipated effect on the shareholders of terminating the status of the corporation as a benefit corporation.

(b) If a plan of merger, conversion, or share exchange would have the effect of terminating the status of a benefit corporation as a benefit corporation, the plan must be approved in the manner required by G.S. 55-18-23.

"**§ 55-18-23. Heightened voting requirements.**

In addition to any other requirements of applicable law, where specified in this Article that approval of a matter shall be in the manner required by this section, the following requirements apply:

(1) With respect to a corporation, including a benefit corporation, such matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the outstanding shares or each class and series of stock of the corporation, voting as separate voting groups, regardless of any limitation in the corporation's articles of incorporation or bylaws of the voting rights of such class or series.

(2) With respect to any entity incorporated under Chapter 55A of the General Statutes, the matter must be approved by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of the votes cast by the members entitled to vote thereon.

(3) With respect to an entity organized under Chapter 57C or Chapter 59 of the General Statutes, the matter must be approved in the same manner as would be required for the approval of a merger of such entity, unless otherwise provided in the articles of entity, operating agreement, or partnership agreement of the entity.

"Part 3. Corporate Purposes.

"§ 55-18-30. Corporate purposes.

(a) A benefit corporation shall have as one of its corporate purposes the creation of a general public benefit. A benefit corporation may include in its articles of incorporation other corporate purposes, including the purpose of engaging in any lawful business.

(b) A benefit corporation may include as a corporate purpose in its articles of incorporation one or more specific public benefit purposes in addition to its purposes under subsection (a) of this section.

(c) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit purpose. Such an amendment must be approved by the shareholders of the benefit corporation in the manner required by G.S. 55-18-23.

"Part 4. Accountability.

"§ 55-18-40. Standard of conduct for directors.

(a) In discharging their duties as directors of a benefit corporation, directors shall consider the effects of any action or decision not to act upon the following:

(1) The shareholders of the benefit corporation.

(2) The employees and workforce of the benefit corporation, its subsidiaries, and suppliers.

(3) The interests of customers to the extent they are beneficiaries of the general or specific public benefit purposes of the benefit corporation.

(4) The local community and society, including the interests of each community in which offices or facilities of the benefit corporation, its subsidiaries, or suppliers are located.

(5) The local and global environment.

(6) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

(7) The ability of the benefit corporation to accomplish its general and any specific public benefit purpose.

(b) In addition to the required considerations in subsection (a) of this section, a director of a benefit corporation may consider the effects of any action or decision not to act upon the following:

(1) The resources, intent, and conduct (past, stated, and potential) of any person seeking to acquire control of the benefit corporation.

(2) Other pertinent factors or the interests of any other group that the director in good faith considers to be appropriate.

(c) A director of a benefit corporation need not give priority to the interests of a particular person or group referred to in subsections (a) and (b) of this section over the interests of any other person or group unless the benefit corporation's articles of incorporation explicitly specify a priority of interests.

(d) The consideration of interests and factors in the manner required by this section shall not be deemed to be inconsistent with the requirements of G.S. 55-8-30.

(e) A director is not liable for monetary damages arising out of an action under this Article with respect to any of the following:

(1) Any act taken as a director, or any omission to act as a director, other than any act or omission that the director at the time of such act or omission knew or believed to be clearly in conflict with the benefit corporation's general public benefit purpose and any specific public benefit purpose stated in its articles of incorporation.

(2) Failure of the benefit corporation to create a general or specific public benefit.

"**§ 55-18-41. Benefit director.**

(a) The board of directors of a benefit corporation must by resolution designate one director who is an independent person to be the benefit director. The benefit director shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this section.

(b) The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director must prepare, and the benefit corporation must include in the annual benefit report to shareholders required by G.S. 55-18-50, the opinion of the benefit director on the following:

(1) Whether the benefit corporation acted in accordance with its general and any specific public benefit purpose in all material respects during the period covered by the report.

(2) Whether the benefit corporation conferred a general public benefit and any specific public benefit during the period covered by the report.

(3) Whether the directors complied with G.S. 55-18-40.

If the benefit director finds a failure under subdivision (1), (2), or (3) of this subsection, the benefit director shall include in the annual benefit report a description, to the extent relevant, of the ways in which the benefit corporation or its directors failed to act or comply.

(d) If a benefit corporation dispenses with a board of directors pursuant to G.S. 55-8-01(c), the articles of incorporation of the benefit corporation must provide that the persons who perform the duties of the board of directors designate an independent person with the powers, duties, rights, and immunities of a benefit director.

(e) Regardless of whether the articles of incorporation or the bylaws of a benefit corporation include a provision limiting or eliminating the personal liability of directors authorized by G.S. 55-2-02(b)(3) or G.S. 55-2-06, a benefit director shall not be personally liable for monetary damages for any act or omission taken in such capacity unless the act or omission constitutes (i) a transaction from which the director derived an improper personal benefit, (ii) willful misconduct, or (iii) a knowing violation of law.

"**§ 55-18-42. Benefit officer.**

(a) A benefit corporation may have an officer designated as the benefit officer.

(b) The duties of the benefit officer shall include the following:

(1) Monitoring the benefit corporation's pursuit of the general and any specific public benefit purpose of the benefit corporation and the general and any specific public benefit created by the benefit corporation.

(2) Performing such other duties to the extent provided in either of the following:

a. The bylaws of the benefit corporation.

b. A resolution adopted by the board of directors of the benefit corporation that is not in conflict with the bylaws.

(3) Preparing the annual benefit report required by G.S. 55-18-50.

"**§ 55-18-43. Right of action; benefit enforcement proceeding.**

(a) The duties of directors under this Article may be enforced only in a benefit enforcement proceeding. No person may bring an action or assert a claim against a benefit corporation or its directors with respect to the duties of directors under this Article, except in a benefit enforcement proceeding.

(b) A benefit enforcement proceeding may be commenced or maintained only by the following:

(1) Directly, by the benefit corporation.

(2) Derivatively, by any of the following:

a. A shareholder that owns five percent (5%) or more of the shares in the benefit corporation.

b. A director.

c. A person or group of persons that owns, directly or indirectly, five percent (5%) or more of the outstanding equity voting interests in an entity of which the benefit corporation is a subsidiary.

d. Other persons specified in the articles of incorporation or bylaws of the benefit corporation.

(c) A benefit enforcement proceeding commenced or maintained derivatively under subdivision (2) of subsection (b) of this section shall be subject to the requirements applicable to derivative proceedings under Part 4 of Article 7 of this Chapter, except that such requirements shall be interpreted to reflect that a benefit enforcement proceeding may be commenced and maintained by those persons listed in subdivision (2) of subsection (b) of this section.

"Part 5. Annual Reporting.

"**§ 55-18-50. Annual benefit report.**

(a) A benefit corporation shall prepare an annual benefit report that includes all of the following:

(1) A narrative description of all of the following:

a. The manner in which the benefit corporation has pursued its general public benefit purposes during the year and the extent to which a general public benefit was created.

b. The manner in which the benefit corporation has pursued any specific public benefit purposes during the year and the extent to which a specific public benefit was created.

c. Circumstances that have materially hindered the pursuit by the benefit corporation of its general and any specific public benefit purposes or the creation by the benefit corporation of a general or specific public benefit.

(2) An assessment of the social and environmental performance of the benefit corporation (i) prepared in accordance with a third-party standard applied consistently with any application of that standard in prior benefit reports or (ii) accompanied by an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity as a director.

(5) The name of each person that owns five percent (5%) or more of the outstanding shares of the benefit corporation either (i) indirectly, to the extent known to the benefit corporation without independent investigation, or (ii) of record.

(6) The statement of the benefit director described in G.S. 55-18-41(c).

(7) A statement of any relationship, including a financial or governance relationship, between the benefit corporation and the entity that developed the third-party standard that might affect the credibility of the objective assessment of the third-party standard, including any relationships between the directors, officers, or material owners of the benefit corporation and the directors, officers, or material owners of the entity that developed the third-party standard.

(b) The benefit report must be sent annually to each shareholder (i) within 120 days following the end of the fiscal year of the benefit corporation or (ii) at the same time that the benefit corporation delivers any other annual report to its shareholders, whichever occurs first.

(c) A benefit corporation must post each annual benefit report on the publicly accessible portion of its Internet Web site, if it maintains such a Web site, for a period of five years from the date the annual benefit report is first sent to shareholders. The compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report as posted.

(d) The annual report that a benefit corporation is required to deliver to the Secretary of Revenue or, in the alternative, to the Secretary of State pursuant to G.S. 55-16-22 must include the most recent benefit report delivered to shareholders pursuant to G.S. 55-18-50(b), except that the compensation paid to directors and any financial or proprietary information included in the benefit report may be omitted from the benefit report delivered to the Secretary of Revenue or Secretary of State under this section."

SECTION 2. G.S. 55-13-02(a) is amended by adding a new subdivision to read:

"(a) In addition to any rights granted under Article 9, a shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares, in the event of any of the following corporate actions:

...

(9) Consummation of a designation of the corporation as a benefit corporation pursuant to Part 2 of Article 18 of this Chapter."

SECTION 3. This act becomes effective October 1, 2012.

VISITOR REGISTRATION SHEET

JUDICIARY C — 6-27-12

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cathy Woolard	Self
Wynne Coleman	Interested Citizen
Sarah Wolfe	McGuireWoods
Davi Heinen	N.C. Nonprofits
A. PEARLMAN	APN
Erik Trojian	B Lab.

VISITOR REGISTRATION SHEET

JUDICIARY C — 6-27-12

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fred Fletcher	Doing Good Network Wash. NC 301 Wilderness Lane
Guy Smith	Self - PO Box 1367 Kings Mtn, NC 28086

House Committee Pages / Sergeants at Arms

NAME OF COMMITTEE JUDICIARY C

DATE: 6-27-12 **Room:** 415

*Name: ASHLEY HINES
County: RICHMOND ~~FILLIS~~
Sponsor: TILLIS

*Name: MARY LEVINER
County: RICHMOND
Sponsor: TILLIS

*Name: OWEN LEVY
County: GASTON
Sponsor: WEST

*Name: SAMUEL JONES
County: GUILFORD
Sponsor: INGLE

*Name:
County:
Sponsor:

House Sgt-At Arms:

1. Name: LARRY ELLIOTT
2. Name: DOUG HARRIS
3. Name:
4. Name:
5. Name:
6. Name: